



Draft Unified Election Law

Pakistan

August 15, 2014.

Draft 20



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A
BILL

to consolidate the laws relating to the conduct of elections and the matters connected therewith or ancillary thereto;

Whereas, it is expedient to provide for the delimitation of constituencies, electoral rolls, political parties, conduct of elections to the National Assembly, Provincial Assemblies and the Senate and to guard against corrupt and illegal practices and other offences at or in connection with such elections and for the determination of doubts and disputes arising out of or in connection with such elections and other matters arising out of or connected therewith.

Therefore, it is hereby enacted as follows:

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called The Elections Act, 2014.

(2) It extends to the whole of Pakistan¹.

(3) It shall come into force at once.

2. Definitions².— In this Act, unless there is anything repugnant in the subject or context,—

- i. **“Article”** means Article of the Constitution;
- ii. **“Assembly”** means the National Assembly or a Provincial Assembly for a Province;
- iii. **“ballot paper account”** means ballot paper account prepared under this Act;
- iv. **“bye-election”** means an election to fill a casual vacancy in the Senate or an Assembly;
- v. **“candidate”** means a person proposed as a candidate for, or seeking election as a member;
- vi. **“Commission”** means the Election Commission constituted under Article 218;
- vii. **“Commissioner”** means the Chief Election Commissioner appointed under the Constitution and includes an Acting Chief Election Commissioner appointed under Article 217;
- viii. **“constituency”** means a constituency delimited under this Act;
- ix. **“Constitution”** means the Constitution of the Islamic Republic of Pakistan;
- x. **“contesting candidate”** means a validly nominated candidate who has not withdrawn his candidature;
- xi. **“data”** means any information in digital form contained in a database maintained by the Commission;
- xii. **“database”** means systematically structured repository of indexed information maintained by the Commission pertaining to an activity under this Act;
- xiii. **“District Returning Officer”** means District Returning Officer appointed under this Act.
- xiv. **“election”** means an election to a seat of a member held under this Act and includes an election to fill the seat of a member which falls

¹ This Act will be made applicable to FATAs and Federal Capital in terms of Article 247(3) and Article-59(1)(c) of the Constitution.

² Definitions are mainly based on the definition clauses of the Representation of the People Act, 1976 (LXXXV of 1976) but definitions from other election laws have also been included.

vacant on the expiration of his term in the Senate;

- xv. **“election agent”** means an election agent appointed by a candidate under this Act and, where no such appointment is made, the candidate acting as his own election agent;
- xvi. **“election petition”** means an election petition made under this Act;
- xvii. **“elector”** in relation to a constituency, means a person who is enrolled on the electoral roll for any electoral area in that constituency;
- xviii. **“electoral area”** means—
 - a. in rural areas, a village or a census block; and
 - b. in urban areas,—
 - (i) where there is a municipal ward or census block, such ward or census block;
 - (ii) where there is no municipal ward or a census block, a well-defined Mohallah or a street; and
 - (iii) where the ward or census block, Mohallah or street is too big, a well-defined part thereof; or
 - c. such other area as may be determined by the Commission;
- xix. **“electoral roll”** means an electoral roll prepared, revised or corrected under this Act and includes the electoral rolls prepared under the Electoral Rolls Act 1974 (XXI of 1974), existing immediately before the commencement of this Act.
- xx. **“foreign-aided political party”** means a political party which—
 - (a) has been formed or organised at the instance of any government or political party of a foreign country; or
 - (b) is affiliated to or associated with any government or political party of a foreign country; or
 - (c) receives any aid, financial or otherwise, from any government or political party of a foreign country, or any portion of its funds from foreign nationals;
- xxi. **“member”** means member of a House or a Provincial Assembly;
- xxii. **“nomination day”** means the day appointed under this Act for the nomination of candidates;
- xxiii. **“person”** means a person as defined under Article 260 of the Constitution.
- xxiv. **“polling agent”** means a polling agent appointed under this Act;
- xxv. **“polling day”** means the day on which poll is taken for an election;
- xxvi. **“polling officer”** means a polling officer appointed under this Act

for a polling station;

- xxvii. **“political party”** means an association of citizens or a combination or groups of such associations formed with a view to propagating or influencing political opinion and participating in elections for any elective public office or for membership of a legislative body;
- xxviii. **“population”** means the population in accordance with the last preceding census officially published;
- xxix. **“prescribed”** means prescribed by the rules;
- xxx. **“presiding officer”** means a Presiding Officer appointed under this Act for a polling station and includes an Assistant Presiding Officer exercising the powers and performing the functions of the Presiding Officer;
- xxxi. **“Registration Officer”** means a Registration Officer appointed under this Act, and includes an Assistant Registration Officer performing the functions of a Registration Officer;
- xxxii. **“returned candidate”** means a candidate who has been declared elected as a member under this Act;
- xxxiii. **“Returning Officer”** means a Returning Officer appointed under this Act and includes an Assistant Returning Officer or, as the case may be, a polling officer for Senate election, exercising the powers and performing the functions of the Returning Officer;
- xxxiv. **“revising authority”** means a person appointed under this Act to hear and dispose of claims and objections and applications for correction relating to the electoral rolls;
- xxxv. **“rules”** means the Rules made under this Act;
- xxxvi. **“scrutiny day”** means the day appointed under this Act for the scrutiny of nomination papers;
- xxxvii. **“spoilt ballot paper”** means a ballot paper which has been spoiled and is returned to the Presiding Officer or, as the case may be, the Returning Officer for Senate election;
- xxxviii. **“Technocrat or Aalim”** means a person who is the holder of a degree requiring conclusion of at least sixteen years of education, recognized by the Higher Education Commission³ or a recognized statutory body, as well as at least twenty years of experience, including a record of achievement at the national or international level.
- xxxix. **“tribunal”** means an Election Tribunal appointed under this Act for the trial of election petitions;
- xl. **“validly nominated candidate”** means a candidate whose

³ In the original provisions the words were “University Grants Commission” which has been replaced with “Higher Education Commission”.

nomination has been accepted;

- xli. “**voter**” means in relation to a Province, a person who is a member of the Provincial Assembly of that Province⁴, and
- xlii. “**withdrawal day**” means a day appointed under this Act on or before which candidature may be withdrawn.

⁴ While making this Act applicable to FATAs and Federal Capital in terms of Article 247(3) and Article-59 (1)(c) of the Constitution, definition of the voter should be taken care of.

CHAPTER II ELECTION COMMISSION

3. Procedure of the Commission⁵.—(1) Subject to the provisions of this section, the Commission shall regulate its own procedure.

(2) If, upon any matter requiring a decision of the Commission, there is difference of opinion amongst its members, the opinion of the majority shall prevail and the decision of the Commission shall be expressed in terms of the opinion of the majority.

(3) The Commission may exercise its powers and perform its functions notwithstanding that there is a vacancy in the office of any one of its members or that any one of its members is, for any reason, unable to attend its proceedings and the decision of the majority of the members shall have the effect of the decision of the Commission:

Provided that-

- i. Where the members attending the proceedings of the Commission are four and they are equally divided in their opinion; or
- ii. Where the members attending the proceedings of the Commission are three and there is difference of opinion amongst them,

the matter shall be placed before the Commission for decision.

4. Delegation of powers, etc.⁶—(1) The Commission may authorise its Chairman or any of its members or any of the officers of the Commission to exercise and perform all or any of its powers and functions under this Act.

(2) For the purpose of delimitation of constituencies, the Commission may authorize three or more of its members, acting together, to exercise and perform all or any of its powers and functions under this Act.

(3) In case four members are authorized under sub-section (2), the decision of majority shall prevail and where three members are authorized, the decision shall be unanimous.

(4) Where there is a difference of opinion amongst members in both the situations mentioned in sub-section (3), the matter shall be placed before the Commission for decision.

5. Assistance to the Commission.⁷—(1) All executive authorities in the Federation and in the Provinces shall render such assistance to the Commissioner and the Commission in the discharge of his or its functions as may be required of them by the Commissioner or the Commission.

(2) The Commissioner or the Commission may require any person or authority to perform such functions or render such assistance for the purposes

⁵ Section 4 of the Delimitation of Constituencies Act 1974 as amended.

⁶ Section 5 of the Delimitation of Constituencies Act 1974 as amended.

⁷ Section 5, The Representation of People Act, 1976.

of this Act as he or it may direct.

(3) District Returning Officer, Returning Officer, Assistant Returning Officer, Presiding Officer, Assistant Presiding Officer, Polling Officer, and any other officer appointed under this Act including an officer of a law enforcement agency for the conduct of an election shall be deemed to be under the control, superintendence and discipline of the Commission for the period commencing on and from the date of the notification of election programme till publication of the name of the returned candidate in official gazette.

Comment [s1]: It seems to be a repetition in view of section 49.

(4) No posting or transfer of any official of Federal, a Provincial or a Local Government appointed in connection with an election shall be made after the election programme has been announced including a posting or transfer, the decision in respect whereof has not been implemented.⁸

6. Power to requisition property.⁹—(1) The Provincial Government or an officer authorized by it in this behalf may, upon a request made in this behalf by the Commission, by order in writing, requisition any such vehicle, vessel or animal as is needed or is likely to be needed for the purpose of transporting to and from any polling station ballot boxes or other election material or any officer or other person engaged for the performance of any duties in connection with the election:

Provided that no vehicle, vessel or animal which is being used by a candidate or his election agent for any purpose connected with the election of such candidate shall be so requisitioned.

(2) Any person authorized in this behalf by the Provincial Government may take possession of any vehicle, vessel or animal requisitioned under sub-section (1) and may for that purpose use such force, including police force, as may be reasonably necessary.

(3) Where any vehicle, vessel or animal is requisitioned under sub-section (1), there shall be paid to the owner thereof compensation the amount of which shall be determined by the Provincial government or the officer requisitioning the vehicle, vessel or animal on the basis of the fares and rates prevailing in the locality for its hire:

Provided that, where the owner of the vehicle, vessel or animal, being aggrieved by the amount of compensation so determined makes an application to the Provincial Government within a period of thirty days from the date the amount has been determined for the matter being referred to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Provincial Government may determine.

7. Power to Issue Directions.¹⁰—(1) The Commission shall have power to issue such directions or orders as may be necessary for the

⁸In line with recommendations of National Assembly's Standing Committee on Law, Justice and Parliamentary Affairs (with some modifications)

⁹ Section 6, The Representation of People Act, 1976.

¹⁰Article 6, The Election Commission Order, 2002.

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performance of its functions and duties, including an order doing complete justice in any matter pending before it and an order for the purpose of securing the attendance of any person or the discovery or production of any document.

(2) Any such direction or order shall be enforceable throughout Pakistan and shall be executed as if it had been issued by the High Court.

(3) Anything required to be done for carrying out the purpose of this Act, for which no provision or no sufficient provision exists shall be done by such authority and in such manner as the Commission may direct.¹¹

(4) The Commission may issue direction to any government or authority not to fill a vacant post or transfer any official without prior approval of the Commission, after the issuance of an election programme and till the publication of the names of the returned candidates in the official gazette.¹²

Comment [s2]: Similar provision is available at sub-section (4) of section 5.

8. Commission to ensure fair election, etc.¹³— Save as otherwise provided, the Commission may—

- (a) stop the polls at any stage of the election if it is convinced that it shall not be able to ensure the conduct of the election justly, fairly and in accordance with law due to large scale mal-practices, including coercion, intimidation and pressures, prevailing at the election;
- (b) review an order passed by an officer under this Act or the rules, including rejection of a ballot paper; and
- (c) issue such instructions and exercise such powers, and make such consequential orders, as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly and fairly, and in accordance with the provisions of this Act and the rules.

9. Power of Commission to punish for contempt.¹⁴— The Commission shall have the same power as the High Court has to punish any person for contempt of court and the Contempt of Court Ordinance, 2003 (V of 2003), shall have effect accordingly as if reference therein to a “court” and to a “judge” were a reference, respectively, to the “Commission” and the “Commissioner” or, as the case may be, a member of the Commission.

10. Power of the Commission to declare a poll void.¹⁵—(1) Notwithstanding anything contained in this Act, if, from facts apparent on the face of the record and after such summary inquiry as it may deem necessary,

¹¹ The Election Commission Order, 2002 Article-9B and Section-104 of ROPA-1976. This provision is suggested for strengthening Election Commission and for enabling it to conduct free and fair elections in accordance with its mandate.

¹² Normally government officials are transferred in order to favour some party or candidate, which affects neutrality and fairness of the election process. Election Commission generally issues directions in this regard which will now have legal sanction behind it.

¹³ Section 103, The Representation of the People Act, 1976.

¹⁴ Section 103A The Representation of the People Act, 1976.

¹⁵ Section 103AA The Representation of the People Act, 1976.

the Commission is satisfied that by reason of grave illegalities or violation of the provisions of this Act or the rules; or that an agreement referred to in clause(g) of sub-section (1) of section 154 has been entered into restraining women from exercising their right¹⁶ to vote, the poll in that constituency ought to be declared void as a whole or a part thereof¹⁷, it may make a declaration accordingly and by notification in the official Gazette, call upon the electors of that constituency to elect a member of the Assembly in the manner provided for in Section 87 or, as the case may be, order re-poll at the polling station or polling stations of the area of which the election has been declared void.

(2) Notwithstanding the powers conferred on it by sub-section (1), the Commission may order filing of complaint under section 170 of the Act before a court of competent jurisdiction against persons who entered into such agreement.

(3) Notwithstanding the publication of the name of a returned candidate under section-82, the Commission may exercise the powers conferred on it by sub-section (1) before the expiration of sixty days after such publication; and, where the Commission does not finally dispose of a case within the said period, the election of the returned candidate shall be deemed to have become final, subject to a decision of a Tribunal on an election petition, if any.

(4) While exercising the powers conferred on it by sub-section (1), the Commission shall be deemed to be a Tribunal to which an election petition has been presented and shall, notwithstanding anything contained in Chapter IX, regulate its own procedure.

¹⁶ This provision is required to address the issue of debarring women from exercising their right to vote.

¹⁷ Pursuant to the Supreme Court's judgment in Aftab Shaaban Mirani case.

CHAPTER III ELECTORAL ROLLS

11. Preparation and computerization of electoral rolls for election to the Assemblies and Local Government.¹⁸ —(1) The Commission shall cause to be prepared the electoral rolls for election to the National Assembly, Provincial Assemblies and Local Governments afresh or by revising the existing electoral rolls¹⁹ from time to time in the prescribed manner.²⁰

Provided that the Commission may direct fresh preparation of electoral roll of an electoral area if cogent reasons exist justifying fresh preparation, which include changes in the limits of that electoral area or on account of large scale displacement of population due to a natural calamity²¹

(2) The Commission shall make arrangements for the computerization of the electoral rolls in the manner as it may determine and any printout from the database maintained by, or with the authority of the Commission shall be deemed to be an electoral roll published under this Act.

12. Appointment of Registration Officer, etc.²²—(1) The Commission shall appoint a Registration Officer for an electoral area or group of electoral areas for the purpose of preparation, revision, correction and amendment of the electoral rolls and may, for that purpose, appoint as many Assistant Registration Officers as may be necessary.

(2) Subject to such instructions as may be given in this behalf by the Commission,—

- (a) An Assistant Registration Officer may, under the control of the Registration Officer, perform the functions of a Registration Officer; and
- (b) A Registration officer may require any person to assist him in the performance of his functions.

13. Preparation of preliminary electoral rolls, etc.²³—(1) Subject to the superintendence, directions and control of the Commission the Registration Officer shall prepare the electoral rolls by including therein the name of every person entitled to be enrolled as elector in the electoral area under this Act.

(2) A person shall be entitled to be enrolled as an elector in an electoral area if he —

Comment [s3]: May be omitted in view of the proviso added to the section and a footnote explaining the reason thereof

Comment [s4]: Cogent reasons including change in the boundaries of an electoral area or large scale shifting of population due to natural calamity, exist justifying fresh preparation of electoral rolls thereof.

¹⁸ Section 4, The Electoral Rolls Act, 1974.

¹⁹ The conduct of elections to Local Governments is also now Constitutional responsibility of Election Commission. Hence, electoral rolls for local government elections are to be prepared by the Commission. This change has been incorporated with reference to the ECP Revised Electoral Reform Package and recommendations of National Assembly's Standing Committee on Law, Justice and Parliamentary Affairs.

²⁰ The amendment is in line with the provisions of Article 219.

²¹ The LFC is of the view that the word "afresh" is not in line with provisions of Article 219 of the Constitution and may, therefore be omitted. However, the Commission should have power to order fresh preparations of rolls in certain circumstances.

²² Section 5, The ElectoralRollsAct,1974.

²³ Section 6, The ElectoralRollsAct,1974.

- (a) is a citizen of Pakistan;
- (b) is not less than eighteen years of age and possesses national identity card issued by the National Database and Registration Authority constituted under the National Database and Registration Authority Ordinance, 2000 (VIII of 2000), or comes in possession of such National Identity Card on the last day fixed for inviting claims, objections and applications for corrections, if any, for the purpose of preparing or revising the Electoral Rolls:

Provided that National Identity Card issued by National Database and Registration Authority shall be deemed to be valid for the purpose of registration as elector or casting vote at a poll, notwithstanding the expiry of its validity period.

- (c) is not declared by a competent court to be of unsound mind; and
- (d) is, or is deemed under section 15 of this Act to be, resident in the electoral area.

14. Meaning of resident.²⁴—(1) Save as hereinafter provided, a person shall be deemed to be resident in an electoral area if he ordinarily resides, or owns or is in possession of a dwelling house or other immoveable property, in that area.

(2) Where a person owns or possesses dwelling houses or other immovable property in more than one electoral area, he may, at his option, be enrolled in any one such area.

(3) A person who is in the service of Pakistan or holds any public office shall be deemed to be resident in the electoral area where he is posted, unless he applies in writing to the Registration Officer for enrolment in the electoral area in which he would have been enrolled if he had not been in such service or had not held such office.

(4) The wife of any such person as is referred to in sub-section (3) and such of his children as are entitled to be enrolled shall, if they ordinarily reside with such person, be deemed to be residents in the electoral area in which such person is deemed to be resident under that sub-section.

(5) A person who is detained in prison or held in other custody at any place in Pakistan shall be deemed to be resident in the electoral area in which he would have been resident if he had not been so detained or held in such custody.

15. Preliminary publication.— The preliminary electoral rolls prepared under section 14, together with a notice inviting claims, objections and applications for corrections, if any, with respect thereto, shall be published and displayed in such manner and form as may be prescribed.

16. Appointment of Revising Authorities.²⁵— The Commission

²⁴ Section 7, The ElectoralRollsAct,1974.

²⁵ Section 9, The ElectoralRollsAct,1974.

shall appoint a Revising Authority for any electoral area or group of electoral areas, for the purpose of receiving and deciding claims, objections and applications for corrections relating thereto.

17. Period for lodging claims and objections.²⁶— Every claim for inclusion of a name in the electoral roll, and every objection to, or application for correction of any entry therein shall be made to the Revising Authority on the prescribed form within a period of twenty-one days or more as may be determined by the Commission next following the date of the publication of the preliminary electoral rolls under section 16.

18. Transfer of name from one electoral area to another.²⁷— A person may apply for transfer of his name from the electoral roll of one electoral area to the electoral roll of another by filing:

- (a) an objection to the inclusion of his name in the roll in which it has been included; and
- (b) a claim for the inclusion of his name in the other.

with the appropriate Revising Authority or Revising Authorities, if it is preferred before the final publication of the electoral roll under section 24, or with the appropriate Registration Officer or Registration Officers, if it is preferred after such final publication.

19. Rejection of claims and objections.²⁸— Any claim or objection or application for correction not made within the period specified in section 17 or in the prescribed manner shall be rejected.

20. Application by the Registration Officer for inclusion of name.²⁹— The Registration Officer may, within the period mentioned in section 18, apply to the Revising Authority,—

- (a) for the inclusion in the electoral roll of the name of any person left out due to inadvertence or the absence of timely information while preparing the preliminary electoral rolls; or
- (b) for the exclusion of any name from the electoral roll or any correction of clerical, printing or other error which he is himself authorized to make under section 23 ii

21. Enquiry into claims and objections.³⁰—(1) Except where a claim or objection or an application for correction is rejected under section 20, or is decided without further inquiry being valid, *prima-facie*, the Revising Authority shall, give its decision after holding a summary inquiry into each claim, objection or application, after giving notice to the parties concerned.

(2) Every decision of the Revising Authority under sub-section (1) shall be final and be communicated to the appropriate Registration Officer.

²⁶ Section 10, The ElectoralRollsAct,1974.

²⁷ Section 11, The ElectoralRollsAct,1974.

²⁸ Section 12, The ElectoralRollsAct,1974.

²⁹ Section 13, The ElectoralRollsAct,1974.

³⁰ Section 14, The ElectoralRollsAct,1974.

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22. Correction of electoral rolls.³¹— The Registration Officer—

- (a) shall correct the electoral roll in accordance with the decisions of the Revising Authority under section 21; and
- (b) may further correct any clerical, printing or other error subsequently discovered in the roll, but not so as to include therein, or exclude therefrom, the name of any elector

23. Final publication.³²— After making additions, deletions, modifications or corrections, if any, under section 23, the Registration Officer shall publish in the prescribed manner and form the final electoral roll for each electoral area.

24. Annual revision of electoral roll.³³— An electoral roll shall be revised and corrected annually in the prescribed manner and form—

- (a) so as to include the name of any qualified person whose name does not appear in such roll, or
- (b) so as to delete the name of any person who has died or who is or has become disqualified for enrolment, or
- (c) for correcting any entry or for supplying any omission in such roll:

Provided that, if, for any reason, the electoral roll for any electoral area is not revised, the validity or continued operation of the electoral roll shall not thereby be affected.

25. Enrolment and correction other than the annual revision.³⁴—(1) Any person whose name is not included in an electoral roll for the time being in force and who claims that he was or is entitled to be enrolled on that roll, may apply to the appropriate Registration Officer, **on the prescribed Form**³⁵ along with a photostat copy of the identity card issued to him under the National Database and Registration Authority Ordinance, 2000 (VIII of 2000) for the inclusion of his name therein, and if the Registration Officer is satisfied after giving such notice and making such inquiry as he may consider necessary that the applicant was or is entitled to have his name enrolled, he shall for the purpose of further correcting the roll insert the name of such person in that roll:

Provided that if the name of applicant is already included in the electoral roll of any other electoral area of the same district or any other district, the Registration Officer shall strike off his name from the roll of that other electoral area of the same district and inform the Registration Officer of other district who shall, on receipt of the information, strike off the name of the applicant from that roll.

³¹ Section 15, The ElectoralRollsAct, 1974.

³² Section 16, The ElectoralRollsAct, 1974.

³³ Section 17, The ElectoralRollsAct, 1974.

³⁴ Section 18, The ElectoralRollsAct, 1974.

³⁵ Separate Forms for enrolment, deletion and corrections in the electoral rolls will be prescribed under the rules for regulating the process.

Provided further that name of an elector shall not be transferred from one constituency to another constituency within ninety days of the polling day for general election.

(2) Any person may apply to the Registration Officer on the prescribed Form for the correction of any entry in an electoral roll for the time being in force; and—

- (a) if the entry relates to the applicant and the Registration Officer is satisfied after giving such notice and making such inquiry as he may consider necessary that the entry relates to the applicant and is erroneous or defective in any particular, he shall correct the roll accordingly; and
- (b) if the entry does not relate to the applicant and the Registration Officer is satisfied after giving notice to the person to whom the entry relates and after making such inquiry as he may consider necessary that the entry is erroneous or defective or should be deleted, he shall correct the electoral roll accordingly.

(3) Where the Registration Officer rejects application made under sub-section (1) or sub-section (2), he shall record in writing brief reasons of his decision.

(4) A person aggrieved by the order of the Registration Officer made under sub-section (1) or sub-section (2) may, within thirty days of such order, appeal to the appellate authority to be appointed by the Commission and the decision of such authority given thereon shall be final.

26. Preparation of rolls afresh.³⁶— If the Commission on account of any gross error or irregularity in or in the preparation of an electoral roll for any electoral area or a part thereof, considers it necessary so to do, it may by order direct that the roll for such area or part shall stand cancelled and that a fresh electoral roll for that area or part be prepared in accordance with the provisions of this Act.

27. No correction after constituency called upon to elect.³⁷— No revision or correction of any electoral roll for an electoral area shall be made nor shall any order under section 26 be made in respect of any electoral roll at any time after the constituency of which such electoral area forms part has been called upon to elect its representative and before such representative has been elected.

28. Maintenance of electoral rolls.³⁸— An electoral roll as revised and corrected shall be maintained in the prescribed manner and shall be kept open to public inspection; and copies of such roll shall be supplied to any person who applies therefor, on payment of such fee as may be prescribed.

29. Departure from normal procedure in exceptional

³⁶ Section 19, The ElectoralRollsAct, 1974.

³⁷ Section 20, The ElectoralRollsAct, 1974.

³⁸ Section 21, The ElectoralRollsAct, 1974.

circumstances.³⁹— Where the Commission is satisfied that it is not possible to follow the procedure laid down for the preparation of an electoral roll in respect of any electoral area, it may direct that an electoral roll for such electoral area shall be prepared in such manner as it deems fit.

30. Duration of the electoral rolls.⁴⁰— The electoral roll for any electoral area prepared under this Act shall come into force immediately upon its final publication and shall remain in force until revised.

31. Access to register of births and deaths, etc.⁴¹—(1) The person in charge of any register of births and deaths and any authority to whom an application for registration is to be made under the National Database and Registration Authority Ordinance, 2000 (VIII of 2000), shall furnish to the Registration Officer with such information, including extracts from such register or, as the case may be, applications, as may be necessary for the purposes of this Act.

(2) Sub-section (1) shall have effect notwithstanding anything contained in section 28 of the National Database and Registration Authority Ordinance, 2000 (VIII of 2000), and no person who furnishes any information to a Registration Officer in pursuance of the said sub-section shall be liable to any punishment.

(3) The Secretary of each Local Council shall submit the list of deceased persons of that Council on prescribed form to Registration Officer concerned on quarterly basis.⁴²

32. No person to be enrolled more than once or in more than one electoral area⁴³— No person shall be enrolled—

- (a) on the electoral roll for any electoral area more than once; or
- (b) on the electoral rolls for more than one electoral area.

33. Validity of electoral rolls etc. not affected by reason of any mistake.⁴⁴— An electoral roll shall not be invalid by reason of any mis-description of a person enrolled thereon or of omission of the name of any person entitled to be so enrolled or of inclusion of the name of any person not so entitled.

34. Power of the Commissioner to include, etc. a name in an electoral roll.⁴⁵— Subject to section 28, the Commissioner may, at any time, order—

- (a) the inclusion in an electoral roll of the name of any person entitled to be enrolled on such electoral roll, and such name

³⁹ Section 22, The ElectoralRollsAct,1974.

⁴⁰ Section 23, The ElectoralRollsAct,1974 .

⁴¹ Section 24 ,The ElectoralRollsAct,1974.

⁴² The amendment is necessary to keep the Electoral Rolls up-dated and to delete names of deceased voters regularly and in line with recommendations of National Assembly's Standing Committee on Law, Justice and Parliamentary Affairs.

⁴³ Section 25, The ElectoralRollsAct,1974.

⁴⁴ Section 26, The ElectoralRollsAct,1974.

⁴⁵ Section 27, The ElectoralRollsAct,1974.

shall, from the date of such order, form part of the electoral roll;

- (b) the exclusion from an electoral roll of the name of any person who has died or has become disqualified to be a elector, and such name shall, from the date of such order, stand excluded from that roll; and
- (c) the removal of the name of any person from an electoral roll where such removal becomes necessary due to the repetition of the name in the same electoral roll or in the electoral rolls of more than one electoral area.

35. Information not to be divulged. — Any person who –

- (a) being an employee of the Commission publishes or communicates to any person, any information or data acquired by him in the course of such employment without being so authorized by the Commission;
- (b) breaches, in any manner, the security or integrity of the information or data contained in the electoral rolls database;
- (c) Having possession of any information or data which to his knowledge has been obtained or disclosed in contravention of this Act or in breach of the security, secrecy or integrity thereof, publishes or communicates that information or data to any other person; or
- (d) Misuses or abuses, in any manner, the information or data contained in the electoral rolls database,

shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to five million rupees, or with both.⁴⁶

36. Certain offences triable by Registration Officer.—

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Registration Officer, if so authorized by the Commission in this behalf, may:

- (a) exercise the powers of a Magistrate of the first class under the said Code in respect of the offences punishable under sections 172, 173, 174, 175, 177, 178, 179, 180, 182, 186, 187, 188, 189, 191, 196, 197, 198, 199, 200, 464 and 471 of the Pakistan Penal Code, 1860 (Act XLV of 1860); and
- (b) take cognizance of any such offence and shall try it summarily in accordance with the provisions of Code of Criminal Procedure, 1898 (Act V of 1898), relating to summary trials.

⁴⁶ Inserted vide Act no (xi) of 2011 dated 5th May 2011

CHAPTER IV DELIMITATION OF CONSTITUENCIES

37. Commission to delimit constituencies.⁴⁷— The Commission shall delimit territorial constituencies for elections to the National Assembly and to each Provincial Assembly in accordance with the provisions of the Constitution and this Act.

38. Allocation of seats in the National Assembly.⁴⁸— (1) On the basis of population, the seats in the National Assembly for each Province, the Federally Administered Tribal Areas and the Federal Capital shall be allocated as set out in the table below;

Province / Area	General Seats	Women Seats	Total
Balochistan	14	03	17
Khyber Pakhtunkhwa	35	08	43
Punjab	148	35	183
Sindh	61	14	75
Federally Administered Tribal Areas	12	-	12
Federal Capital	02	-	02
Total	272	60	332

Provided that in addition to the number of seats referred in above table, there shall be in the National Assembly ten seats reserved for non-Muslims as defined in Article 260 of the Constitution.

(2) The seats allocated under sub-section (1) shall be reallocated after each succeeding census.

39. Delimitation of Constituencies.⁴⁹—(1) For the purpose of election to the National Assembly, the Commission shall divide—

- (a) each Province into as many separate territorial constituencies as the number of general seats allocated to that Province under **section 38(1)** and
- (b) the Federally Administered Tribal Areas and the Federal Capital into as many separate territorial constituencies as the number of general seats respectively allocated to the said Areas and the Federal Capital under **section 38(1)**.

(2) The constituencies for the seats reserved for women in the National Assembly shall be such that each Province forms one constituency with as many such seats as are allocated to that province under **section 40 (1)**.

⁴⁷ Section 3 of the Delimitation of Constituencies Act, 1974.

⁴⁸ Section 7 of the Delimitation of Constituencies Act, 1974. Allocation of seats for the National Assembly has been changed in this section after the 18th Amendment.

⁴⁹ Section 8 of the Delimitation of Constituencies Act, 1974.

(3) The constituency for all seats reserved for non-Muslims in the National Assembly under clause (4) of Article 51 shall be the whole country.

(4) For the purpose of election to Provincial Assemblies, the Commission shall divide each Province into as many separate territorial constituencies as the number of general seats given below;⁵⁰

Province	General Seats	Women	Non – Muslims	Total
Balochistan	51	11	03	65
Khyber Pakhtunkhwa	99	22	03	124
Punjab	297	66	08	371
Sindh	130	29	09	168

(5) The constituencies for the seats reserved for women and non-Muslims in the Provincial Assemblies shall be such that each Province forms one constituency with as many such seats as are allocated to that Province under sub-section (4).

40. Principles of delimitation.⁵¹—(1) All constituencies for general seats shall, as far as practicable, be delimited having regard to the distribution of population in geographically compact areas, existing boundaries of administrative units, facilities of communication and public convenience and other cognate factors to ensure homogeneity in the creation of constituencies:

Provided that for the purpose of delimiting constituencies for the general seats for the Federally Administered Tribal Areas two or more separate areas may be grouped into one constituency.

(2) As far as may be the constituencies for election to the same Assembly shall be equal among themselves in population.

Provided that variation in population of constituencies of the same Assembly shall not ordinarily exceed ten per cent subject to a maximum of fifteen per cent.⁵²

41. Reports of Commission and list of constituencies.⁵³—(1) For the purpose of delimiting constituencies, the Commission may receive and consider representations, hold inquiries, summon witnesses and record evidence, and shall prepare and publish in the official Gazette a preliminary report and list of constituencies specifying the areas proposed to be included in each constituency.

(2) Any person entitled to vote at an election to the National Assembly or a Provincial Assembly may, within thirty⁵⁴ days of the publication of the report

⁵⁰ Article 106 table added for facility of reference.

⁵¹ Section 9 of the Delimitation of Constituencies Act 1974.

⁵² In order to meet international standards and to provide equal representation to voters, it is considered appropriate by LFC to suggest some restrictions on the variation in population at the time of delimitation.

⁵³ Section 10A of the Delimitation of Constituencies Act 1974.

⁵⁴ In LFC's opinion the existing time allowed (15 days) provided for filing objections/suggestions is not sufficient.

under sub-section (1), make a representation to the Commission in respect of the delimitation of constituencies.

(3) The Commission shall, after hearing and considering the representations, if any, received by it, make such amendments, alterations or modifications, in the preliminary list published under sub-section (1) as it thinks fit or necessary, and shall publish in the official Gazette the final report and list of constituencies showing the areas included in each constituency.

42. Power of Commission to make amendment, alteration or modification in the final list of constituencies.— Notwithstanding anything contained in this Act, the Commission may, at any time, of its own motion, make such amendments, alterations or modifications in the final list of constituencies published under sub-section (3) of section 41 or in the areas included in a constituency, as it thinks necessary.

CHAPTER V
QUALIFICATIONS AND DISQUALIFICATIONS OF A MEMBER

43. Qualifications ⁵⁵— (1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) or a Provincial Assembly unless;

- (a) he is a citizen of Pakistan;
- (b) he is, in the case of National Assembly, not less than twenty-five years of age and is enrolled as an elector in any electoral roll in:
 - i. any part of Pakistan, for election to a general seat or a seat reserved for non-Muslims; and
 - ii. any area in a Province from which she seeks membership for election to a seat reserved for women;
- (c) he is, in the case of Provincial Assembly, not less than twenty-five years of age and is enrolled as an elector in any electoral roll in a Province from where he seeks membership for that Assembly;
- (d) he is, in the case of the Senate, not less than thirty years of age and is enrolled as a voter in any area in a Province or, as the case may be, the Federal Capital or the Federally Administered Tribal Areas, from where he seeks membership;⁵⁶
- (e) he is of good character and is not commonly known as one who violates Islamic Injunctions;
- (f) he has adequate knowledge of Islamic teachings and practices obligatory duties prescribed by Islam as well as abstains from major sins;
- (g) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law;⁵⁷ and
- (h) he has not, after the establishment of Pakistan, worked against the integrity of the country or opposed the ideology of Pakistan.

(2) The disqualifications specified in clauses (e) and (f) of sub-section (1) shall not apply to a person who is a non-Muslim, but such a person shall have good moral reputation.⁵⁸

44. Disqualifications⁵⁹. — A person shall be disqualified from being elected or chosen as, and from being, a member of Majlis-e-Shoora (Parliament) or a Provincial Assembly,⁶⁰ if-

⁵⁵Section 99, The Representation of People Act 1976.

⁵⁶ This is due to the merger of Senate and National Assembly in the Unified law.

⁵⁷ This is incorporated due to the changes brought about by the 18th Amendment.

⁵⁸ The proviso in the existing law has been re-numbered as sub-section (2).

⁵⁹ Section 99 (1A) The Representation of People Act 1976

⁶⁰ This highlighted change is due to the unification of laws.

- (a) he is of unsound mind and has been so declared by a competent court; or
- (b) he is an un-discharged insolvent; or
- (c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State; or
- (d) he holds an office of profit in the service of Pakistan other than an office declared by law not to disqualify its holder; or
- (e) he is in the service of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest; or
- (f) being a citizen of Pakistan by virtue of section 14B of the Pakistan Citizenship Act, 1951 (II of 1951), he is for the time being disqualified under any law in force in Azad Jammu and Kashmir from being elected as a member of the Legislative Assembly of Azad Jammu and Kashmir; or
- (g) he has been convicted by a court of competent jurisdiction for propagating any opinion, or acting in any manner, prejudicial to the Ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or the integrity, or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan, unless a period of five years has elapsed since his release; or⁶¹
- (h) he has been, on conviction for any offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release; or⁶²
- (i) he has been dismissed from the service of Pakistan or service of a corporation or office set up or, controlled by the Federal Government, Provincial Government or a Local Government on the grounds of misconduct, unless a period of five years has elapsed since his dismissal; or⁶³
- (j) he has been removed or compulsorily retired from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a Local Government on the grounds of misconduct, unless a period of three years has elapsed since his removal or compulsory retirement; or⁶⁴
- (k) he has been in the service of Pakistan or of any statutory body or any body which is owned or controlled by the Government or in

⁶¹ This change has been made due to the changes brought about by the 18th Amendment.

⁶² This change has been made due to the changes brought about by the 18th Amendment.

⁶³ This change has been made due to the changes brought about by the 18th Amendment.

⁶⁴ This change has been made due to the changes brought about by the 18th Amendment.

which the Government has a controlling share or interest, unless a period of two years has elapsed since he ceased to be in such service; or

- (l) he is found guilty of a corrupt or illegal practice under any law for the time being in force, unless a period of five years has elapsed from the date on which that order takes effect; or
- (m) he, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account or as a member of a Hindu undivided family, has any share or interest in a contract, not being a contract between a cooperative society and Government, for the supply of goods to, or for the execution of any contract or for the performance of any service undertaken by, Government:

Provided that the disqualification under this clause shall not apply to a person-

- i. where the share or interest in the contract devolves on him by inheritance or succession or as a legatee, executor or administrator, until the expiration of six months after it has so devolved on him;
- ii. where the contract has been entered into by or on behalf of a public company as defined in the Companies Ordinance, 1984 (XLVII of 1984), of which he is a shareholder but is not a director holding an office of profit under the company; or
- iii. where he is a member of a Hindu undivided family and the contract has been entered into by any other member of that family in the course of carrying on a separate business in which he has no share or interest; or

Explanation.—In this section “goods” does not include agricultural produce or commodity grown or produced by him or such goods as he is, under any directive of Government or any law for the time being in force, under a duty or obligation to supply; or

- (n) he holds any office of profit in the service of Pakistan other than the following offices, namely:—
 - i. an office which is not whole time office remunerated either by salary or by fee;
 - ii. the office of Lumbardar, whether called by this or any other title;
 - iii. the Qaumi Razakars;
 - iv. any office the holder whereof, by virtue of such office, is liable to be called up for military training or military service under any law providing for the constitution or raising of a Force; or
- (o) he, whether by himself or by any person in trust for him or for his

benefit or on his account, has any share or interest in a contract for—⁶⁵

- i. the supply of goods to, or
 - ii. the execution of any work, or the performance of any service, undertaken by, the Government, or a local authority or an autonomous body in which the Government has a controlling share or interest, he does not, after his election as a member but within thirty days of his making oath as such make a declaration in writing to the Commission that he has such share or interest, unless a period of five years has elapsed since his failure to do so; or
 - iii. being a managing agent, manager or secretary of, or holding any other office carrying the right to remuneration in, any company or corporation (other than a cooperative society) in the capital of which the Government has not less than twenty-five percent share or which is managed by the Government, he does not, after his election as a member but within thirty days of his making oath as such, make a declaration in writing to the Commission that he is such managing agent, manager or secretary, or holds such office, unless a period of five years has elapsed since his failure to do so; or
- (p) he has been convicted and sentenced to imprisonment for having absconded by a competent court under any law for the time being in force; or
- (q) he has obtained a loan for an amount of two million rupees or more, from any bank, financial institution, cooperative society or cooperative body in his own name or in the name of his spouse or any of his dependents, which remains unpaid for more than one year from the due date, or has got such loan written off, or
- (r) he or his spouse or any of his dependents has defaulted in payment of government dues and utility expenses, including telephone, electricity, gas and water charges ⁶⁶in excess of ten thousand rupees, for over six months, at the time of filing his nomination papers; or
- (s) he is for the time being disqualified from being elected or chosen as a member of the Majlis-e-Shoora (Parliament) or of a Provincial Assembly under the Constitution or any law for the time being in force.

Explanation-I — For the purposes of this clause “law” shall not include an Ordinance promulgated under Article 89 or Article 128.⁶⁷

⁶⁵ In order to improve construction of the sub-section

⁶⁶ The words “of an amount” have not been provided in the Constitution so these may be deleted.

⁶⁷ As suggested by ECP’s Legal Framework Committee due to the changes brought about by the 18th Amendment.

Explanation-II — In this section, service of Pakistan has the same meaning as in Article 260.

45. Disqualification on account of certain offenses.— (1) Where a person has been convicted for having exceeded the limit of election expenses laid down in section 119 or having failed to file return of election expenses in accordance with section 120 or for any other offence under this Act, or has been found guilty of any corrupt or illegal practice by a Tribunal, he shall, if the Commission makes an order to that effect, be disqualified, for such period not exceeding five years as may be specified in the order from being or being elected as, a member of an Assembly or, as the case may be, Senate.

(2) Where a person has been convicted for an offence punishable under section 171 J of the Pakistan Penal Code (Act XLV of 1860), he shall be disqualified for a period of seven years from being, or being elected as, a member of an Assembly or the Senate.

46. Disqualifications for being election agent.⁶⁸— Any person who is for any period disqualified under section 46 for being, or being elected as, a member of an Assembly or, as the case may be, Senate shall also stand disqualified for that period for being appointed as an election agent.

⁶⁸ Section 101, The Representation of Peoples Act 1975.

CHAPTER VI CONDUCT OF ELECTIONS TO THE ASSEMBLIES

47. Appointment of District Returning Officer.⁶⁹ — (1)

The Commission shall appoint, from amongst its own officers or officers of Federal Government or a Provincial Government, a District Returning Officer for each district for election of an assembly.

(2) Subject to the superintendence, directions and control of the Commission, the District Returning Officer shall coordinate and supervise all work in the district in connection with the conduct of elections and shall also perform such other duties and functions as may be entrusted to him by the Commission.

48. Appointment of Returning Officer and Assistant Returning Officer.⁷⁰ — (1) The Commission shall appoint, from amongst its own officers or officers of Federal Government, Provincial Governments, local governments or corporations, autonomous or semi-autonomous bodies of such Governments, a Returning Officer for each constituency.

Provided that a person may be appointed as Returning Officer for two or more constituencies.

(2) The Commission may appoint, from amongst its own officers or officers of Federal Government, Provincial Governments, local governments or corporations, autonomous or semi-autonomous bodies controlled by any of these Governments, as many Assistant Returning Officers as may be necessary.

(3) An Assistant Returning Officer shall assist the Returning Officer in the performance of his functions under this Act and may, subject to any condition imposed by the Commission, exercise and perform, under the control of the Returning Officer, the power and functions of the Returning officer.

(4) It shall be the duty of a Returning Officer to do all such acts and things as may be necessary for effectively conducting an election in accordance with the provisions of this Act and the rules.

49. Subordination to the Commission⁷¹. — (1) An official or a public functionary or any member of the Police force or other law enforcing agency appointed to perform any duty in connection with the holding of an election shall act according to the provisions of this Act, Rules and directions of the Commission.

(2) Any official or public functionary or any member of the Police force or other law enforcing agency, who is not an employee of the Commission but appointed to perform functions under this Act, shall be deemed to be on

⁶⁹Section 7(1) and (5) of The Representation of the People Act 1976. The highlighted amendments in this section are needed to widen the scope of appointment of District Returning Officers and Returning/Assistant Returning Officers and are required due to the withdrawal of the judiciary from this role.

⁷⁰Section 7 (2), (3), & (4) of The Representation of the People Act 1976. The proposed amendment will widen the scope of appointment of District Returning Officers and Returning /Assistant Returning Officers.

⁷¹ LFC has suggested inclusion of these provisions in order to strengthen ECP's supervision and control over temporarily engaged officials from other departments.

deputation to the Commission for the period his services have been acquired by the Commission and such official or public functionary or any member of the Police force or other law enforcing agency shall, during that period, be subject to the control, superintendence and discipline of the Commission.

(3) The Commission may, at any time, for reasons to be recorded in writing:

- (a) suspend, for insubordination or dereliction of duty, any official or public functionary or any member of the Police force or other law enforcing agency appointed to perform any duty in connection with the holding of an election;
- (b) substitute any person referred to in clause (a) by another such person, and return the substituted individual to the department to which he belongs, with appropriate report on his conduct;
- (c) make recommendation to the concerned ministry or department for action by the authority competent to take disciplinary action, against such person in respect of any act of insubordination or dereliction of duty while on election duty, if such person obstructs or prevents or attempts to obstruct or prevent the conduct of fair and impartial poll or interferes or attempts to interfere with an elector when he records his vote, or influence in any manner the polling staff or an elector or does any other act calculated to influence the result of election, or disobeys any order or avoid to carry out any instruction duly issued by the Commission or any officer authorized to issue any order or instruction.

(4) The recommendation made under sub-section (3) shall be acted upon by the authority competent to take disciplinary action and action taken shall be communicated to the Commission within a period of ninety days from the date of its receipt.

50. Presiding Officers and polling officer⁷².—(1) A Returning Officer shall appoint for each polling station a Presiding Officer and such number of Assistant Presiding Officers and polling officers from amongst the officers of the Federal Government, Provincial Governments, autonomous bodies, local governments and corporations established or controlled by such Governments to assist the Presiding Officer as the Returning Officer may consider necessary:

Provided that a person who is, or has at any time been, in the employment of any candidate shall not be appointed as a Presiding Officer, Assistant Presiding Officer or polling officer.

(2) The Returning Officer shall submit a list of such Presiding Officers, Assistant Presiding Officers and polling officers to the District Returning Officer at least **thirty**⁷³ days before the polling day for its approval and no change in

⁷² Section 9, Chapter III The Representation of the People Act 1976.

⁷³ The extension in time will help Returning Officer to arrange proper training for the polling personnel before their deployment.

the list shall be made except with the approval of the Commission;

(3) A Presiding Officer shall conduct the poll in accordance with the provisions of this Act and the rules, shall be responsible for maintaining order at the polling station and shall report to the Returning Officer any fact or incident which may, in his opinion, affect the fairness of the poll:

Provided that, during the course of the poll, the Presiding Officer may entrust such of his functions as may be specified by him to any Assistant Presiding officer and it shall be the duty of such Assistant Presiding Officer to perform the functions so entrusted.

(4) The Returning Office shall authorize one of the Assistant Presiding Officers to act in place of the Presiding Officer if the Presiding Officer is, at any time during the poll, by reason of illness or other cause, not present at the polling station, or is unable to perform his functions; and any absence of the Presiding Officer and the reasons therefor, as soon as possible after the close of the poll, be reported to the Returning Officer;

(5) The Returning Officer may, at any time during the poll, for reasons to be recorded in writing, suspend any Presiding Officer, Assistant Presiding Officer or Polling Officer and make such arrangements as he may consider necessary for the performance of the functions of the officer so suspended;

51. Notification for election.⁷⁴—(1) As soon as may be necessary and practicable, the President, **in consultation with the Commission**,⁷⁵ makes an announcement of the date or dates on which the polls shall be taken, the Commission, not later than thirty days of such announcement, shall, by notification in the official Gazette, call upon a constituency **or constituencies** to elect a representative or representatives and appoint—

- (a) the last date for making nominations, which shall be the **seventh** day after the date of publication of the notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (b) **the last date for publication of the names of the candidates who have filed their nominations inviting objections shall be second day after the last day of filing of nomination papers;** the dates for the scrutiny of nominations, which shall be the **fifteen** days immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (c) the last date for filing of appeals against acceptance or rejection

⁷⁴ Section 11 The Representation of Peoples Act 1976.

⁷⁵ Section 11 of the Act provides that the announcement of date or dates, on which the polls shall be taken, shall be made by the President of Pakistan. Since Election Commission, under the Constitution and law, is responsible for conducting elections to Assemblies, it will be more appropriate that the date for election is fixed by the President in consultation with the Election Commission. The LFC is of the view that current time for completion of election process (60 days) is insufficient and creates multiple problems for ECP, ROs and candidates. It, therefore, suggested that at least 90 days period should be available for the purpose. This requires amendment in the Constitution. In anticipation of such amendment, the LFC has suggested amendments in provisions regarding election schedule.

of nominations, which shall be the **fifth** day following the last date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

- (d) the last date for decision of appeals, which shall be the **tenth** day following the last date for filing of appeals or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (e) the last date for the withdrawal of candidature, which shall be the day following the last date for decision of appeals or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (f) the date for allocation of symbols to contesting candidates shall be the day following the last date for withdrawal of candidature or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (g) the last date for publication of the revised list of candidates, which shall be the second day following the last date for decision of appeals; and
- (h) the date or dates on which a poll shall, if necessary be taken, which or the first of which shall be a date not earlier than the **thirtieth** day after the publication of the revised list of candidates.

(2) A Returning Officer shall, as soon as may be after the publication of a notification under sub-section (1), give public notice of the dates specified by the Commission in respect of the constituency or constituencies of which he is the Returning Officer; and the public notice shall be published at some prominent place or places within the constituency to which it relates.

(3) A Returning Officer shall, by the public notice given under sub-section (2) invite nominations specifying the time by which and the place at which nomination papers shall be received by him.

52. Alteration in election programme.⁷⁶— Notwithstanding anything contained in section 51, the Commission may, at any time after the issue of a notification under sub-section (1) of that section, make such alterations in the programme announced in that notification for the different stages of the election **or may issue fresh election programme**⁷⁷ as may, in its opinion, be necessary.

53. Supply of electoral rolls.⁷⁸—(1) The Commission shall provide the Returning Officer for each constituency with copies of electoral rolls for all the electoral areas within that constituency.

(2) The Returning Officer shall provide the Presiding Officer of each polling

⁷⁶ Section 11A The Representation of Peoples Act 1976.

⁷⁷ The suggested amendment shall provide space for Election Commission to announce fresh programme keeping in mind other cognate factors.

⁷⁸ Section 10 The Representation of Peoples Act.

station with copies of electoral rolls containing the names of the electors entitled to vote at that polling station.

54. Polling stations:⁷⁹ (1) After appointment of Returning Officers, the Commission shall provide, in the prescribed format, draft list of polling stations for each constituency to the Returning Officer of that constituency;

Provided that the polling stations established for the preceding election shall, as far as may be practicable, be retained.

(2) The Returning Officer, after physical verification of proposed polling stations and after making such alterations in the list provided to him under sub-section (1) as he may deem necessary, shall publish preliminary list of polling stations, as may be directed by the Commission, for a period of twenty one days inviting objections and suggestions from the electors of that constituency;

Provided that an elector may file an objection or a suggestion with the District Returning Officer, within the specified period, only in connection with the polling station to which he has been assigned.

(3) The District Returning Officer may, after hearing the objections filed with him and making such inquiry as he may deem necessary, make alterations in the list of polling stations as may be required and shall at least thirty days before the polling day publish in the official gazette final list of polling stations of each constituency in the district.

(4) No change shall be made in the final list of polling stations published in the official gazette under sub-section (3) except with the prior approval of the Commission.

(5) The Returning Officer shall establish in each constituency polling stations according to the final list published under sub-section (3).

(6) A polling station shall be situated in a Government building for the constituency and, where no Government building is available, a polling station may be established in a building owned by a private educational institution duly registered with the concerned education authorities or an improvised polling station shall be set up on a public property.

Provided that no polling station shall be located in any premises which belong to, or is under the direct or indirect control of any candidate.

55. Nomination for election.⁸⁰— (1) Any elector of a constituency, may propose or second the name of any duly qualified person to be a member for that constituency.

Provided that no elector shall subscribe to more than one nomination paper either as proposer or seconder.⁸¹

(2) Every nomination shall be made by a separate nomination paper in the

⁷⁹ In order to make the process of establishment of polling stations more transparent, the LFC suggests to substitute this section with the original section 8 of the ROPA.

⁸⁰ Section 12 The Representation of Peoples Act 1976.

⁸¹ Proposed by the Legal Reform Committee to remove inconsistency in the nomination form and the main provision of law.

prescribed form which shall be signed both by the proposer and the seconder and shall, on solemn affirmation made and signed by the candidate, accompany—

- (a) a declaration that he has consented to the nomination and that he fulfils the qualifications specified in Article 62 and is not subject to any of the disqualifications specified in Article 63 or any other law for the time being in force for being elected as a member;⁸²
- (b) an undertaking that,
 - i. he shall open an account with a scheduled bank and shall deposit therein the amount not exceeding the amount provided under sub-section (2) of section 118;
 - ii. he shall make all election expenses out of the amount deposited under sub-clause (i); and
 - iii. he shall not make any transaction towards the election expenses except from the account mentioned in sub-clause (i).⁸³
- (c) a declaration that no loan for an amount of two million rupees or more, obtained from any bank, financial institution, cooperative society or corporate body in his own name or in the name of his spouse or any of his dependents, or any business concern mainly owned by him or the aforesaid, stands unpaid for more than one year from the due date, or has got such loan written off;
- (d) a declaration that he, his spouse or any of his dependents or a business concern mainly owned by him or the aforesaid, is not in default in payment of government taxes, dues or utility charges, including telephone, electricity, gas and water charges in excess of ten thousand rupees, for over six months, at the time of filing of nomination papers;
- (e) a statement specifying his educational qualifications, occupation, National Identity Card number and National Tax Number, if any, along with attested copies thereof; and
- (f) a statement of his assets and liabilities and those of his spouse and dependents on the prescribed form as on the preceding thirtieth day of June.

Explanation.—For the purpose of this section, the expression—

"loan" shall mean any loan, advance, credit or finance obtained or written off on or after the 31st day of December, 1985, but shall not include the loan the recovery of which has been stayed or suspended by any order of a court or tribunal, including the High Court and the Supreme Court;

⁸² It is the demand of the Parliamentarians to point it out in the relevant provision of law as well as in nomination form.

⁸³ In pursuance of the judgment of Hon'ble Supreme Court in Workers Party Case.

"**mainly owned**" shall mean holding or controlling a majority interest in a business concern;

"**taxes**" include all taxes levied by Federal Government, Provincial Government or a local government, but shall not include taxes the recovery of which has been stayed or suspended by any order of a court or tribunal;

"**government dues and utility charges**" shall, inter alia, include rent, charges of rest houses or lodges owned by the Federal Government, Provincial Governments, local governments or corporations established or controlled by such governments, but shall not include the government dues and utilities charges the recovery of which has been stayed or suspended by any order of a court or tribunal.

(3) Every nomination paper shall be delivered to the Returning Officer by the candidate or by his proposer or seconder or if, so authorized in writing by the candidate, by his nominee and the Returning Officer shall acknowledge receipt of the nomination paper specifying the date and time of receipt.

(4) A person may be nominated in the same constituency by not more than five nomination papers.

(5) The Returning Officer shall assign a serial number to every nomination paper and endorse thereon the name of the person presenting it, and the date and time of its receipt, and inform such person of the time and place at which he shall hold scrutiny.

(6) The Returning Officer shall cause to be affixed at a conspicuous place in his office a notice of every nomination paper received by him containing the particulars of the candidates as shown in the nomination paper.

(7) Any elector of a constituency may object to the candidature of a candidate of that constituency who has submitted nomination papers or whose name has been included in the party list submitted by a political party for election to an Assembly before the Returning Officer within the period specified by the Commission for the scrutiny of nomination papers of candidate contesting election of an Assembly.⁸⁴

(8) The nomination form and accompanying declarations and statements shall be open to inspection by the public, and copies thereof may be made available by the Commission in such manner and on payment of such fee as may be prescribed.

56. Deposits⁸⁵— (1) Subject to the provisions of sub-section (2), no

⁸⁴ The proposed amendment will bring more transparency in election process as any elector of the constituency will have a right to file an objection against any candidate from that constituency.

⁸⁵ A sum of Rs.4000/- for elections to the National Assembly and a sum of Rs.2000/- for election to the Provincial Assembly is required to be deposited either in the Government treasury or with the Returning Officer before filing the nomination papers under section 13 of the Representation of People Act, 1976, which is refundable within six months in terms of section 43 of the said Act and this amount was fixed in the year 1991. It is proposed that the said deposit may be increased up to Rs.20,000/- and Rs.10,000/- respectively .. The security deposit for Local Government Elections is more than presently prescribed security for elections to National and Provincial Assemblies. The proposed amendment will hopefully reduce the number of non-serious candidates filing nomination papers.

nomination paper delivered under section 54 shall be accepted unless—

- (a) a sum of rupees—
 - i. Fifty⁸⁶ thousand for election to a seat in the National Assembly, and
 - ii. Twenty Five⁸⁷ thousand for election to a seat in the Provincial Assembly, is deposited in cash by the candidate or by any person on his behalf at the time of its delivery; or
- (b) It is accompanied by a bank draft for a sum as aforesaid drawn in favour of the Returning Officer or a receipt showing that a sum as aforesaid has been deposited by the candidate or by any person on his behalf at any branch of the National Bank of Pakistan or at a Government Treasury or Sub-Treasury.

(2) The sum deposited shall not be refunded to a candidate who has received less than one fourth of the total number of votes cast at the election.⁸⁸

Provided that a deposit shall not be required to be returned after three months of the termination of the proceedings or, as the case may be, the declaration of the result of the election.⁸⁹

(3) A deposit which is not required to be returned under sub-section (2) shall be forfeited to the Federal Government.⁹⁰

(4) Not more than one deposit under sub-section (1) shall be required in the case of a person who has been nominated as a candidate by more than one nomination papers.

57. Scrutiny.⁹¹—(1) The candidates, their election agents, the proposers and seconders and one other person authorized in this behalf by each candidate, and an elector who has filed an objection to the nomination of a candidate, may attend the scrutiny of nomination papers, and the Returning Officer shall give them reasonable opportunity for examining all nomination papers delivered to him under section 57:

Comment [s5]: SOPs to be developed.

Provided that an elector who has filed an objection to the nomination of a candidate shall only attend the scrutiny of the nomination paper of that candidate.

(2) The Returning Officer shall, in the presence of the persons attending the scrutiny under sub-section (1), examine the nomination papers and decide any objection raised by any such person to any nomination.

(3) The Returning Officer may, either of his own motion or upon any objection, either by an elector or by any person referred to in sub-section (1), conduct such summary enquiry as he may think fit and may reject nomination

⁸⁶ Recommendation of Standing Committee.

⁸⁷ Recommendation of Standing Committee.

⁸⁸ Recommendation of Standing Committee

⁸⁹ Recommendation of the Electoral Legal Framework Committee.

⁹⁰ Recommendation of Standing Committee

⁹¹ Section 14 The Representation of Peoples Act 1976.

paper if he is satisfied that—

- (a) the candidate is not qualified to be elected as a member;
- (b) the proposer or the seconder is not qualified to subscribe to the nomination paper;
- (c) any provision of section 57 or section 58 has not been complied with or submits any false or incorrect declaration or statement in any material particular; or
- (d) the signature of the proposer or the seconder is not genuine:

Provided that—

- i. the rejection of a nomination paper shall not invalidate the nomination of a candidate by any other valid nomination paper;
- ii. the Returning Officer may, for the purpose of scrutiny, require any agency or authority to produce any document or record;
- iii. the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow any such defect to be remedied forthwith, including an error in regard to the name, serial number in the electoral roll or other particulars of the candidate or his proposer or seconder so as to bring them in conformity with the corresponding entries in the electoral roll; and
- iv. the Returning Officer shall not enquire into the correctness or validity of any entry in the electoral roll.

(4) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting it and shall, in the case of rejection, record brief reasons therefor.

(5) A candidate may prefer an appeal against the decision of the Returning Officer rejecting or, as the case may be, accepting the nomination paper of the candidate to the Tribunal constituted for the constituency to which the nomination relates and consisting of a Judge of the High Court nominated by the Commission⁹², in consultation with the Chief Justice of the High Court concerned⁹³ and such appeal shall be summarily decided within such time as may be notified by the Commission and any order passed thereon shall be final:

(6) If, on the basis of information or material coming to its knowledge by any source, a Tribunal constituted under sub-section (5) is of the opinion that a candidate whose nomination paper has been accepted is a defaulter of loans,

Comment [s6]: This provision is contrary to the Article 63 (1) (o) of the Constitution, as well as section 99 (1A) (t) of ROPA, hence, the Committee recommends the omission of this provision.

⁹² The "Commissioner" is replaced with the "Commission" after the 18th Amendment (recommendation of Standing Committee).

⁹³ The Election Commission is competent to appoint Election Tribunals. It is, therefore, in the fitness of things that he should also appoint Appellate Tribunals in consultation with the chief justice of the concerned high court, for the purpose of hearing appeals against acceptance or rejection of Nomination papers by the Returning Officers. Experience has shown that summary to the President takes many days to get approval. For providing timely justice to the aggrieved parties, it is necessary that the Appellate Tribunals may be appointed and notified within the scheduled time (recommendation of Standing Committee).

taxes, government dues or utility charges or has had any loan written off or suffers from any other disqualification from being elected as a member, it may, on its own motion, call upon such candidate to show cause why his nomination papers may not be rejected, and if the tribunal is satisfied that the candidate is actually a defaulter as aforesaid or has had a loan written off or suffers from any disqualification, it may reject the nomination papers.

(7) An appeal not disposed of within the period specified in sub-section (5) shall be deemed to have been rejected.

(8) Announcement of the day and time appointed for the hearing of an appeal under sub-section (5) over the radio or television or by publication in the press shall be deemed to be sufficient notice of the day and time so appointed.

58. Publication of list of candidates.⁹⁴—(1) The Returning Officer shall, after the scrutiny of nomination papers, prepare and publish in the prescribed manner a list of validly nominated candidates.

(2) In case an appeal against the decision of the Returning Officer is accepted by the Tribunal referred to in sub-section (5) of section 58, the Returning Officer shall revise the list of validly nominated candidates accordingly.

(3) The Returning Officer shall, on the second day following the last date for decision of appeal under sub-section (5) of section 58, prepare and publish in the prescribed manner the revised list of validly nominated candidates.

59. Withdrawal.⁹⁵—(1) Any validly nominated candidate may, by notice in writing signed by him and delivered to the Returning Officer on or before the withdrawal date either by the candidate himself or through an advocate duly authorized in writing by him, withdraw his candidature.

Explanation.—Authorisation in favour of an advocate shall be attested by a competent authority, such as Oath Commissioner or a Notary appointed under the Notaries Ordinance 1961 (XIX of 1961).

(2) A notice of withdrawal under sub-section (1) shall, in no circumstances, be open to recall or cancellation.

(3) On receiving a notice of withdrawal under sub-section (1) the Returning Officer shall, if he is satisfied that the signature on the notice is that of the candidate, cause a copy of the notice to be affixed at a conspicuous place in his office.

(4) The Returning Officer shall, **on the day following the withdrawal day**,⁹⁶ prepare and publish in the prescribed manner a list of contesting candidates which shall, if there are more than one contesting candidates, indicate their respective symbols and supply a copy of the list to each of them.

⁹⁴ Section 15 The Representation of Peoples Act 1976.

⁹⁵ Section 16 The Representation of Peoples Act 1976.

⁹⁶ Practically withdrawal date ends at midnight and the Returning Officer prepares list of contesting candidates next day. Suggested amendment will give a legal sanction to this practice.

60. Retirement from election etc.⁹⁷—(1) A contesting candidate may retire from the contest by a notice in writing signed by him and delivered to the Returning Officer on any day not later than four days before the polling day either by such candidate in person or through an advocate duly authorized in writing, by such candidate.

Explanation.—Authorisation in favour of an advocate shall be attested by a competent authority, such as Oath Commissioner or a Notary appointed under the Notaries Ordinance 1961 (XIX of 1961).

(2) No person who has given a notice of retirement under sub-section (1) shall be allowed to cancel the notice.

(3) The Returning Officer shall upon receiving a notice of retirement under sub-section (1) cause a copy thereof to be affixed at some conspicuous place in his office and also to be published in such manner as he may think fit.

(4) A person in respect of whom a notice of retirement has been published under sub-section (3), shall be deemed to have withdrawn his candidature under section 61.

61. Death of a candidate after nomination.⁹⁸—(1) If a contesting candidate dies before the day for taking of the poll, the Returning Officer shall, by public notice, terminate the proceedings relating to that election.

(2) Where the proceedings relating to an election have been terminated under sub-section (1), fresh proceedings shall be commenced in accordance with the provisions of this Act, as if for a new election:

Provided that it shall not be necessary for the other contesting candidates to file fresh nomination paper or make a further deposit under section 57.

62. Postponement etc., under certain circumstances.⁹⁹—(1) Where the proceedings relating to nomination, scrutiny or withdrawal cannot, for reasons beyond the control of the Returning Officer, be recorded in writing, take place on the day appointed therefor, he may postpone such proceedings.

(2) When the proceedings are postponed by the Returning Officer under sub-section (1), he shall inform the Commission of his having done so and the Commission shall, by notification in official Gazette, fix another day for the proceedings so postponed and if necessary, also the day or days for any subsequent proceedings.

63. Uncontested election.¹⁰⁰—(1) Where after, scrutiny under section 59, there remains only one validly nominated candidate, or where, after withdrawal under section 61 or retirement under section 62, there remains only one contesting candidate, the Returning Officer shall, by public

⁹⁷ Section 17 The Representation of Peoples Act 1976.

⁹⁸ Section 18 The Representation of Peoples Act 1976.

⁹⁹ Section 19 The Representation of Peoples Act 1976.

¹⁰⁰ Section 20 The Representation of Peoples Act 1976.

notice, declare such candidate to be elected to the seat:

Provided that, if after scrutiny any candidate indicates that he intends to file an appeal under sub-section (5) of section 58 against the rejection of his nomination paper, no person shall be declared elected until the period appointed for filing such appeal has expired and no such appeal has been filed or, where an appeal is filed, until the disposal of such appeal.

(2) The Returning officer shall submit to the Commission a return of the election in respect of which he has made a declaration under sub-section (1).

(3) The Commission shall, after such inquiry as it may deem necessary in any case, publish in the official Gazette the name of the candidate declared elected under sub-section (2).

64. Candidate to file certificate of party affiliation.¹⁰¹— Each contesting-candidate, before seeking allotment of prescribed symbol, shall file a declaration before the Returning Officer about his party affiliation, if any, along with a certificate from the political party showing that he is party candidate from the constituency.

65. Contested election and allotment of symbols.— (1) If there are more than one contesting candidate in respect of any constituency, the Returning Officer shall allot, subject to any direction of the Commission, one of the prescribed symbols to each contesting candidate in accordance with the procedure provided in chapters XI and XII.

(2) The Returning Officer, after allotment of symbols to contesting candidates under sub-section (1), shall:-

(a) publish in such manner as the Commission may direct, the names of the contesting candidates arranged in Urdu alphabetical order specifying against each the symbol allotted to him,

(b) give public notice of the poll.

(3) The Returning Officer shall arrange to exhibit prominently at each polling station the name and symbol of each contesting candidate.

66. Election Agent.¹⁰²— (1) A candidate may appoint a person qualified to be elected as a member to be his election agent.

(2) The appointment of an election agent may, at any time be revoked in writing by the candidate and, when it is so revoked or the election agent dies, another person may be appointed by the candidate to be his election agent.

(3) When an election agent is appointed, the candidate shall send to the Returning Officer a notice in writing of the appointment containing the name, father's name and address of the election agent.

(4) Where no appointment of an election agent is made under this section, a

¹⁰¹ Section 20A The Representation of Peoples Act 1976.

¹⁰² Section 22 The Representation of Peoples Act 1976.

candidate shall be deemed to be his own election agent and shall, so far as the circumstances permit, be subject to the provisions of this Act both as a candidate and as an election agent.

67. Polling agent¹⁰³.— (1) The contesting candidate or his election agent may, before the commencement of the poll, appoint for each polling station as many polling agents as may be prescribed and shall give notice thereof in writing to the Presiding Officer.

Provided that no person shall be appointed as polling agent unless he is a registered elector of that polling station.¹⁰⁴

(2) The appointment of a polling agent under sub-section (1) may at any time be revoked by the candidate or his election agent and, when it is so revoked or the polling agent dies, another person may be appointed by the candidate or the election agent to be a polling agent; and a notice of such appointment shall be given to the Presiding Officer.

68. One day poll¹⁰⁵.— Polls for a general election for an Assembly shall be held on the same day and the polls for National Assembly seats and the Provincial Assembly seats may be held simultaneously:

Provided that, if the Commission is satisfied that polls cannot take place in a constituency on account of a natural calamity or for any other reason beyond its control, the Commission may fix another day for holding the poll in that constituency.

69. Hours of the poll¹⁰⁶.— The Commission shall fix the hours, which shall not be less than eight, during which the poll shall be held and the Returning Officer shall give public notice of the hours so fixed and hold the poll accordingly.

70. Stopping of the poll¹⁰⁷.—(1) The Presiding Officer of a polling station shall stop the poll and inform the Returning Officer that he has done so if—

- (a) the poll at the polling station is, at any time, so interrupted or obstructed for reasons beyond the control of the Presiding Officer that it cannot be resumed during the polling hours fixed under section 71; and
- (b) any ballot box used at the polling station is unlawfully taken out of the custody of the Presiding Officer, or is accidentally or intentionally destroyed, or is lost or is damaged or tampered with to such an extent that the result of the poll at the polling station cannot be ascertained.

(2) Where a poll has been stopped under sub-section (1) the Returning Officer shall immediately report the circumstances to the Commission and the

¹⁰³ Section 23 The Representation of Peoples Act 1976.

¹⁰⁴ Previously the omitted proviso stipulated that the polling agent must be from that constituency.

¹⁰⁵ Section 25 The Representation of Peoples Act 1976.

¹⁰⁶ Section 26 The Representation of Peoples Act 1976.

¹⁰⁷ Section 27 The Representation of Peoples Act 1976.

Commission shall direct a fresh poll at that polling station, unless it is satisfied that the result of the election has been determined by the polling that has already taken place at that polling station, taken with the result of the polling at other polling stations, in the same constituency.

(3) Where the Commission orders a fresh poll under sub-section (2), it shall, by notification in the official Gazette,—

- (a) appoint a day for a fresh poll and fix the place at which and the hours during which such fresh poll shall be taken; and
- (b) the Returning Officer shall give public notice of the day so appointed and the place and hours so fixed.

(4) At a fresh poll taken under sub-section (3) at a polling station, all electors to vote thereat shall be allowed to vote and no vote cast at the poll stopped under sub-section (1) shall be counted; and the provisions of this Act and the rules and orders made thereunder shall apply to such fresh poll.

71. Postal ballot.¹⁰⁸—(1) The following persons may cast their votes by postal ballot in such manner as may be prescribed, namely:—

- (a) a person referred to in sub-section (3) or sub-section (4) or sub-section (5) of section 14 of this Act; and
- (b) a person appointed by the Returning Officer, including police personnel, for the performance of any duty in connection with an election at polling station other than the one at which he is entitled to cast his vote.

(2) An elector who, being entitled to do so, intends to cast his vote by postal ballot shall,—

- (a) in the case of a person referred to in clause (a) of sub-section (1), within such time as may be specified by the Commission soon after the issue of the notification under section 51; and
- (b) in the case of a person referred to in clause (b) of sub-section (1), as soon as may be after his appointment, apply to the Returning Officer of the constituency in which he is an elector for a ballot paper for voting by postal ballot; and every such application shall specify the name of the elector, his address and his serial number in the electoral roll.

(3) The Returning Officer shall immediately upon the receipt of an application by an elector under sub-section (2) send by post to such elector a ballot paper and an envelope bearing on its face a form of certificate of posting, showing the date thereof, to be filled in by the proper official of the Post Office at the time of posting by the elector.

(4) An elector on receiving his ballot paper for voting by postal ballot shall record his vote in the prescribed manner and, after so recording, post the

¹⁰⁸ Section 29 The Representation of Peoples Act 1976.

ballot paper to the Returning Officer in the envelope sent to him under sub-section (3), so as to reach the Returning Officer before the consolidation of results by him.

72. Ballot boxes.¹⁰⁹—(1) The Returning Officer shall provide each Presiding Officer with such number of ballot boxes as may be necessary.

(2) The ballot boxes shall be of such material and design as may be approved by the Commission.

(3) Not more than one ballot box shall be used at a time for the purpose of the poll at any polling station, or at any polling booth, where there are more than one polling booths at a polling station.

(4) Before the time fixed for the commencement of the poll, the Presiding Officer shall—

- (a) ensure that every ballot box to be used is empty;
- (b) show the empty ballot box to the contesting candidates and their election agents or polling agents whoever may be present, and record their statements in this behalf in the prescribed form and obtain their signatures on them;
- (c) after the ballot box has been shown to be empty, close and seal it with his own seal and with the seal of such of the candidates, or their election agents or polling agents as may be present and may desire to put their own seals on it; and
- (d) place the ballot box so as to be conveniently accessible to the electors, and at the same time within his view and within the view of such candidates or their election agents or polling agents as may be present.

(5) If one ballot box is full or cannot further be used for receiving ballot papers, the Presiding Officer shall seal that ballot box with his own seal and with the seals of the candidates or their polling agents who may wish to seal it and keep it in a secure place in the polling station and use another ballot box in the manner laid down in sub-section (4).

(6) A Presiding officer shall make such arrangements at the polling station that every elector may be able to secretly mark his ballot paper before folding and inserting it in the ballot box.

73. Voting procedure.¹¹⁰—(1) Where an elector presents himself at the polling station to vote, the Presiding Officer shall issue a ballot paper to the elector after satisfying himself about the identity of the elector and shall, for that purpose, require the elector to produce his national identity card issued under the National Database and Registration Authority Ordinance, 2000 (VIII of 2000).

(2) Before a ballot paper is issued to an elector —

¹⁰⁹ Section 30 The Representation of Peoples Act 1976.

¹¹⁰ Section 33 The Representation of Peoples Act 1976.

- (a) the number and name of the elector as entered in the electoral roll shall be called out;
 - (b) the entry relating to the elector on the electoral roll shall be struck off to indicate that a ballot paper has been issued to him;
 - (c) he shall be required to receive a personal mark, made with indelible ink, on any finger of either hand as indicated by the Commission;
 - (d) the ballot paper shall be stamped on its back with the official mark and signed by the Presiding Officer;
 - (e) the Presiding Officer shall record on the counterfoil of the ballot paper the number of the elector on the electoral roll, the number of National Identity Card of the elector, stamp it with the official mark, sign it and obtain on it the thumb impression of the elector with magnetized ink; and
 - (f) The Presiding Officer shall obtain thumb impression of the elector with magnetized ink on the space provided on the electoral roll for the purpose against the photograph of the elector.¹¹¹
- (3) A ballot paper shall not be issued to a person who—
- (a) fails or refuses to produce his National Identity Card issued to him under the National Database and Registration Authority Ordinance, 2000(VIII of 2000);
 - (b) refuses to put his thumb impression with magnetized ink on the counterfoil or, as the case may be, on the space provided for the purpose on the electoral roll against his photograph therein or¹¹² whose thumb bears traces of its having already been used for putting an impression; or
 - (c) refuses to receive the personal mark with indelible ink or who already bears such a mark or traces of such a mark.
- (4) If a contesting candidate or his election agent or polling agent alleges that an elector to whom a ballot paper is about to be issued already has one or more ballot papers in his possession, the Presiding Officer may require the elector to satisfy him that he does not have any other ballot paper in his possession and may also take such measures as he thinks fit to ensure that such elector does not insert more than one ballot paper in the ballot box.
- (5) On receiving the ballot paper, the elector shall—
- (a) forthwith proceed to the place reserved for marking the ballot paper;
 - (b) put the prescribed mark on the ballot paper at any place within the space containing the name and symbol of the contesting candidate for whom he wishes to vote; and

¹¹¹ As per decision of the Election Commission.

¹¹² As per decision of the Election Commission.

(c) after he has so marked the ballot paper, fold and insert it in the ballot box.

(6) The elector shall vote without undue delay and shall leave the polling station immediately after he has inserted his ballot paper in the ballot box.

(7) Where an elector is blind or is otherwise so incapacitated that he cannot vote without the assistance of a companion, the Presiding Officer shall allow him such assistance and thereupon such elector may do with such assistance anything which an elector is required or permitted to do under this Act.

74. Tendered ballot papers.¹¹³—(1) If a person representing himself to be an elector applies for a ballot paper when another person has already represented himself to be that elector and has voted under the name of the person so applying, he shall be entitled, subject to the provisions of the section to receive a ballot paper (hereinafter referred to as "tendered ballot paper") in the same manner as any other elector.

(2) A ballot paper issued under sub-section (1) shall, after it has been marked and folded by the elector, be placed in the same condition in separate packet bearing the label "Tendered Ballot Paper" instead of being placed in the ballot box and shall not be included in the count by the Presiding Officer or the Returning Officer.

(3) The name of the person applying for a ballot paper under sub-section (1) and his number on the electoral roll shall be entered in a list (hereinafter referred to as "the tendered votes list") to be prepared by the Presiding Officer.

75. Challenge of electors.¹¹⁴—(1) If, at the time a person applies for ballot paper for the purpose of voting, a candidate or his polling agent declares to the Presiding Officer that he has reasonable cause to believe that person has already voted at the election, at the same or another polling station, or is not the person against whose name entered in the electoral roll he is seeking to vote, and undertakes to prove the charge in a court of law and deposits with the Presiding Officer in cash a sum of fifty¹¹⁵ rupees, the Presiding Officer may, after warning the person of the consequences and obtaining on the counterfoil, his thumb impression and if he is literate also his signature issue a ballot paper (hereinafter referred to as "challenged ballot paper") to that person.

(2) If the Presiding Officer issues a ballot paper under sub-section (1) to such person he shall enter the name and address of that person in a list to be prepared by him (hereinafter referred to as "the challenged votes list") and obtain thereon the thumb impression and, if he is literate, also the signature of that person.

(3) A ballot paper issued under sub-section (1) shall, after it has been

¹¹³ Section 34 The Representation of Peoples Act 1976.

¹¹⁴ Section 35 The Representation of Peoples Act 1976. The existing provision of depositing two rupees for challenging a vote is too meager. By enhancing the amount such elements who use this legal facility as a tool to create problems for their opponents, will also be discouraged.

¹¹⁵ Recommendation of Standing Committee.

marked and folded by the elector, be placed in the same condition in a separate packet bearing the label "Challenged Ballot Papers", instead of being placed in the ballot box.

76. Spoilt ballot paper.¹¹⁶—(1) An elector who has inadvertently so spoilt his ballot paper that it cannot be used as a valid ballot paper may, upon proving the fact of inadvertence to the satisfaction of the Presiding Officer and returning the ballot paper to him, obtain another ballot paper and cast his vote by such other ballot paper.

(2) The Presiding Officer shall forthwith cancel the ballot paper returned to him under sub-section (1), make a note to that effect on the counterfoil over his own signatures and sign the cancelled ballot paper, and place it in a separate packet bearing the label "Spoilt Ballot Papers".

77. Voting after close of poll.¹¹⁷—No person shall be given any ballot paper or be permitted to vote after the hour fixed for the close of the poll, except the persons who at that hour are present within the building, room, tent or enclosure in which the polling station is situated and have not voted but are waiting to vote.

78. Proceedings at the close of poll.¹¹⁸—(1) The Presiding Officer shall count the votes immediately after the close of the poll in the presence of such of the contesting candidates, election agents and polling agents as may be present.

(2) The Presiding Officer shall give such of the contesting candidates, election agents and polling agents as may be present reasonable facility of observing the count and give them such information with respect thereto as can be given consistent with the orderly conduct of the count and the discharge of his duties in connection therewith.

(3) No person other than the Presiding Officer, the polling officer, any other person on duty in connection with the poll, the contesting candidates, their election agents and polling agents shall be present at the count.

(4) The Presiding Officer shall—

- (a) open the used ballot box or ballot boxes and count the entire lot of ballot papers taken out therefrom;
- (b) open the packet bearing the label "Challenged Ballot Papers" and count them;
- (c) count, in such manner as may be prescribed, the votes cast in favour of each contesting candidate excluding from the count the ballot papers which bear—
 - i. no official mark and signature of the Presiding Officer;
 - ii. any writing or any mark other than the official mark, the

¹¹⁶ Section 36 The Representation of Peoples Act 1976.

¹¹⁷ Section 37 The Representation of Peoples Act 1976.

¹¹⁸ Section 38 The Representation of Peoples Act 1976.

signature of the Presiding Officer and the prescribed mark or to which a piece of paper or any other object of any kind has been attached;

- iii. no prescribed mark to indicate the contesting candidate for whom the elector has voted; or
- iv. any mark from which it is not clear for whom the elector has voted:

Provided that a ballot paper shall be deemed to have been marked in favour of a candidate if the whole or more than half of the area of the prescribed mark appears clearly within the space containing the name and symbol of that candidate and, where the prescribed mark is divided equally between two such spaces, the ballot paper shall be deemed invalid.

(5) The Presiding officer may recount the votes—

- (a) of his own motion if he considers it necessary; or
- (b) upon the request of a contesting candidate or an election agent present if, in his opinion, the request is not unreasonable.

(6) The valid ballot papers cast in favour of each contesting candidate shall be put in separate packets and each such packet shall be sealed and shall contain a certificate as to the number, both in letters and figures, of the ballot papers put in it and shall also indicate the nature of the contents thereof, specifying the name and symbol of the contesting candidate to whom the packet relates.

(7) The ballot papers excluded from the count shall be put in a separate packet indicating thereon the total number both in letters and figures of the ballot papers, contained therein.

(8) The packets mentioned in sub-sections (6) and (7) shall be put in a principal packet which shall be sealed by the Presiding Officer.

(9) The Presiding Officer shall, immediately after the count, prepare a statement of the count in such form as may be prescribed showing therein the number of valid votes polled by each contesting candidate and the ballot papers excluded from the count.

(10) The Presiding Officer shall also prepare in the prescribed form a ballot paper account showing separately—

- (a) the number of ballot papers entrusted to him;
- (b) the number of un-issued ballot papers;
- (c) the number of ballot papers taken out of the ballot box or boxes and counted;
- (d) the number of tendered ballot papers;
- (e) the number of challenged ballot papers; and

(f) the number of spoilt ballot papers.

(11) The Presiding Officer shall give a certified copy of the statement of the count and the ballot paper account to such of the candidates, their election agents or polling agents as may be present and obtain a receipt for such copy.

(12) The presiding officer shall furnish a certified copy of the statement of the count and the ballot paper account to the returning officer separately.

(13) The Presiding Officer shall publish the statement of the count and ballot paper account by affixing certified copies at a conspicuous place at the polling station for public inspection.¹¹⁹

(14) The Presiding Officer shall seal in separate packets-

- (a) the un-issued ballot papers;
- (b) the spoilt ballot papers;
- (c) the tendered ballot papers;
- (d) the challenged ballot papers;
- (e) the marked copies of the electoral rolls;
- (f) the counterfoils of used ballot papers;
- (g) the tendered votes list;
- (h) the challenged votes list; and
- (i) such other papers as the Returning Officer may direct.

(15) The Presiding Officer shall obtain on each statement and packet prepared under this section the signature of such of the contesting candidates or their election agents or polling agents as may be present and, if any such person refuses to sign, the Presiding Officer shall record that fact.

(16) A person required to sign a packet or statement under sub-section (15) may, if he so desires, also affix his seal to it.

(17) After the close of the proceedings under the foregoing sub-sections, the Presiding Officer shall, in compliance with such instructions as may be given by the Commission in this behalf, cause the packets, the statement of the count and the ballot paper account prepared by him to be sent to the Returning Officer together with such other records as the Commission may direct.

79. Consolidation of results.¹²⁰—(1) The Returning Officer shall give the contesting candidates and their election agents a notice in writing of the day, time and place fixed for the consolidation of the results, and, in the presence of such of the contesting candidates and election agents as may be present consolidate in the prescribed manner the results of the count furnished

¹¹⁹ In order to ensure more transparency in election results, it is suggested that it should be legal responsibility of the Presiding Officer to affix a copy of statement of count outside the polling station for information of general voters/public.

¹²⁰ Section 39 The Representation of Peoples Act 1976.

by the Presiding Officers, including therein the postal ballots received by him before the time aforesaid.

(2) The consolidation proceedings shall be held without any avoidable delay as soon as possible after the polling day.

(3) Before consolidating the results of the count, the Returning Officer shall examine the ballot papers excluded from the count by the Presiding Officer and, if he finds that any such ballot paper should not have been so excluded, count it as a ballot paper cast in favour of the contesting candidate for whom the vote has been cast thereby.

(4) The Returning Officer shall also count the ballot papers received by him by post in such manner as may be prescribed and include the votes cast in favour of each contesting candidate in the consolidated statement except those which he may reject on any of the grounds mentioned in sub-section (4) of section 78.

(5) The ballot papers rejected by the Returning Officer under sub-section (4) shall be shown separately in the consolidated statement.

(6) The Returning Officer shall recount the ballot papers if a request or challenge in writing is made by a contesting candidate or his election agent after giving notice to all contesting candidates.

(7) The Returning Officer shall send a certified copy of statement of count as well as the ballot paper account, as received by him, under sub-section (12) of section 78 to the Commission along with the consolidated statement of the results and the result of the count.

80. Resealing of packets and supply of copies.¹²¹— The Returning Officer shall—

- (a) immediately after preparing the consolidated statement and the return of election, reseal in the prescribed manner the packets and statements opened by him for the purpose of consolidation, permitting such of the candidates and their election agents as may be present to sign the packets and affix their seals to such packets; and
- (b) supply duly attested copies of the consolidated statement and the return of election to such of the candidates and their election agents as may be present.

81. Equality of votes¹²².—(1) Where, after consolidation of the results of the count under section 81, it appears that there is equality of votes between two or more contesting candidates and the addition of one vote for one such candidate would entitle him to be declared elected, the Returning Officer or the Commission, as the case may be, shall forthwith draw a lot in respect of such candidates and the candidate on whom the lot falls shall be deemed to have received the highest number of votes entitling him to be

¹²¹ Section 40 The Representation of Peoples Act 1976.

¹²² Section 41 The Representation of Peoples Act 1976.

declared elected.

(2) The lot shall be drawn in the presence of such of the contesting candidates and their election agents as may be present.

(3) The Returning Officer or the Commission, as the case may be, shall keep record of the proceedings and obtain thereon the signature of such of the candidates and election agents as have been witness to the proceedings, and if any such person refuses to sign, such fact shall be recorded.

82. Declaration of results.¹²³—(1) The Returning Officer shall, after obtaining the result of the count under section 81 or of the drawl of the lots under section 83, intimate the results of the count to the Commission which shall declare by public notice the contesting candidate who has or is deemed to have received the highest number of votes to be elected.

(2) The public notice shall contain the name of, and the total number of votes received by, each contesting candidate as a result of consolidation under section 81 or as a result of drawl of lots under section 83.¹²⁴

(3) The Returning Officer shall, immediately after the count, submit to the Commission a copy of the consolidated statement and the result of the count in the prescribed form and the Commission may cause them to be placed on its official website in due course of time.¹²⁵

(4) Every returned candidate shall, within ten days from the poll of an election, submit a return of election expenses in accordance with the provisions of section 121.

(5) The Commission shall publish in the official Gazette the name of the returned candidate:

Provided that the result of a returned candidate shall not be published who fails to submit the return of election expenses specified under sub-section (4).

Section 43 of ROPA (Return or forfeiture of deposit.) — (Omitted on the recommendation of the Standing Committee of National Assembly on Law, Justice and Parliamentary Affairs.)

83. Documents to be retained by the Commission.—(1) The Returning Officer, on behalf of the Commission, shall deposit the following documents in the treasury or sub-treasury under intimation to the Commission.¹²⁶

- (a) the packets containing the ballot papers each of which shall be sealed with the seal of the Presiding Officer, or, if opened by the Returning Officer, with the seal of the Returning Officer;
- (b) the packets containing the counterfoils of issued ballot papers;

¹²³ Section 42 The Representation of Peoples Act 1976.

¹²⁴ By adopting the proposed amendment, access to the polling station wise results will be available to all stakeholders including observers and general public.

¹²⁵ This will add more transparency to the election process.

¹²⁶ Recommendation of Electoral Legal Framework Committee.

- (c) the packets containing the marked copies of the electoral rolls;
- (d) the packets containing the ballot paper account;
- (e) the packets containing the tendered ballot papers, the challenged ballot papers, the tendered votes list and the challenged votes list; and
- (f) such other papers as the Commission may direct.

(2) The Returning Officer shall endorse in each packet forwarded under sub-section (1) the description of its contents, the date of the election to which the contents relate and the name and number of the constituency for which the election was held.

(3) The Commission shall retain the documents contained in the packets deposited under sub-section (1) for a period of one year from the date of their deposit and thereafter shall, unless otherwise directed by a Tribunal, cause them to be destroyed.

84. Public inspection of documents.¹²⁷— The documents retained by the Commission under section 85, except the ballot papers, shall be open to public inspection at such time and subject to such conditions as may be prescribed, and the Commission shall, upon an application made in this behalf and on payment of such fee and, subject to such conditions as may be prescribed, furnish copies of, or extracts from, those documents.

85. Order for production of documents.¹²⁸—(1) A Tribunal may order the opening of packets of counterfoils and certificates or the inspection of any counted ballot papers.

(2) An order under sub-section (1) may be made subject to such conditions as to persons, time, place and mode of inspection, production of documents and opening of packets as the Tribunal making the order may think expedient:

Provided that, in making and carrying into effect an order for the inspection of counted ballot papers, care shall be taken that no vote shall be disclosed until it has been held by the Tribunal to be invalid.

(3) Where an order is made under sub-section (1), the production by the Commission of any document in such manner as may be directed by the order shall be conclusive evidence that the document relates to the election specified in the order, and any endorsement on any ballot papers or packet of ballot papers or documents so produced shall be *prima facie* evidence that the ballot papers or documents are what the endorsement states them to be.

(4) The production from proper custody of a ballot paper purporting to have been used at an election and of a numbered counterfoil bearing the signature or thumb impression of the elector shall be *prima facie* evidence that the elector whose vote was given by that ballot paper was the elector who had on the electoral rolls the same number as was written on the counterfoil.

¹²⁷ Section 45 The Representation of Peoples Act 1976.

¹²⁸ Section 46, The Representation of Peoples Act 1976

(5) Save as is provided in this section, no person shall be allowed to inspect any rejected or counted ballot papers in the possession of the Commission.

86. Party lists for reserved seats, etc.¹²⁹—(1) For the purpose of election to seats reserved for women and non-Muslims in an Assembly, the political parties contesting election for such seats shall, within the period fixed by the Commission for submission of nomination papers, file separate lists of their candidates in order of priority for seats reserved for women and non-Muslims with the Commission or, as it¹³⁰ may direct, with the Provincial Election Commissioner, who shall forthwith cause such lists to be published for information of the public at large.

Provided that the list submitted by a political party shall not be subject to change or alteration either in the order of priority or through addition of new names or subtraction of any name after expiry of the date of submission of nomination papers.

(2) The parties' lists referred to in sub-section (1) may contain as many names of additional candidates as a political party may deem necessary for contesting seats reserved for women and non-Muslims to provide for any disqualification of candidates during scrutiny of nomination papers or for filling of any vacant seats during the term of an Assembly.

(3) Where a seat reserved for women or non-Muslims in an Assembly falls vacant for death, resignation or disqualification of a member, it shall be filled in by the next person in order of precedence from the party's list of candidates submitted to the Commission under sub-section (1).

Provided that before notifying the name of next person in order of precedence from priority list, such person shall submit a declaration on oath that since filing of nomination paper, he/she has not accrued any disqualification contained in Article 62 and 63 of the Constitution or any other law for the time being in force.

(4) Every candidate contesting election on a seat reserved for women or non-Muslims shall, along with the nomination papers and other relevant documents, submit to the Returning Officer appointed by the Commission in this behalf—

- (a) a copy of the party list of the candidate's political party for such seats;
- (b) declarations and statements as required by law or rules in support of the nomination; and
- (c) the fee required under any law for the time being in force for filing nomination papers.

87. Bye-elections, etc.¹³¹— When the seat of a member of an

¹²⁹ Section 47A The Representation of Peoples Act 1976 chapter V-A.

¹³⁰ Consequential Amendment in law after passage of 18th Amendment in the Constitution.

¹³¹ Section 108 The Representation of Peoples Act 1976.

Assembly becomes vacant, the Commission¹³² shall, by notification in the official Gazette, call upon the constituency concerned to elect a person to fill the seat for such constituency, before such date as may be specified in the notification, and thereupon the provisions of this Act and the rules shall apply, as far as may be, to the election to fill such seat:

Provided that, notwithstanding anything contained in section 53, the days for the several stages of an election shall be such as may be specified in the aforesaid notification.

88. District Complaints Committee.— (1) In order to prevent pre-poll irregularities, the Commission shall appoint a District Complaints Committee, hereinafter referred to as “the Committee”.

(2) The Committee shall be headed by the District and Sessions Judge and shall include heads of the District Administration and District Police, and District Election Commissioner as members.

(3) The Committee referred to in sub-section (1) along with its jurisdiction shall be notified in the official gazette.

(4) The Commission shall determine the terms of reference of the Committee and lay down procedure to be followed by the Committee.

(5) The Commission shall notify the terms of reference and the procedure referred to in sub-section (4), in the official gazette.

¹³² The word “Commissioner” has to be substituted by the word “Commission” to bring it in accord with the Constitution.

CHAPTER VII CONDUCT OF ELECTION TO THE SENATE¹³³

89. Returning Officers.¹³⁴— For the purposes of an election to the Senate, the **Commission**¹³⁵ shall appoint a Returning Officer for each Province.

90. Polling Officers.¹³⁶— The **Commission**¹³⁷ shall, for the purpose of conducting an election, also appoint such number of Polling Officers to assist the Returning Officer as it may consider necessary.

91. Duties and Powers of Returning Officer.¹³⁸—(1) A Returning Officer shall conduct the poll in accordance with the provisions of this Act and the rules and shall exercise all necessary powers for maintaining order at the polling station and shall report to the **Commission**¹³⁹ any fact or incident which may, in his opinion, affect the conduct or fairness of the poll.

(2) The Returning Officer may, during the course of the poll, entrust to any Polling officer such of his functions as may be specified by him; and it shall be the duty of the Polling Officer to perform the functions so entrusted.

(3) The Returning Officer shall authorize one of the Polling Officers to act in his place if he is, at any time during the poll, by reason of illness or other cause, not present at the polling station or is unable to perform his functions.

(4) The Returning Officer may, at any time during the poll, for reasons to be recorded in writing, suspend any Polling Officer and make such arrangements as he may consider necessary for the performance of the functions of the Officer so suspended.

(5) It shall be the duty of a Returning Officer to do all such acts and things as may be necessary for effectively conducting an election in accordance with the provisions of this Act and the rules.

92. Notification for election.¹⁴⁰—(1) For the purpose of Senate election, the **Commission**¹⁴¹ shall, by notification in the official Gazette, call upon the members of the Provincial Assembly of a Province to elect such number of members to the Senate from that Province, as is specified in such notification.

(2) The **Commission**¹⁴² shall in the same notification fix—

¹³³ This entire chapter is taken from the provisions of The Senate Election Act, 1975.

¹³⁴ Section 5 The Senate (Election) Act, 1975

¹³⁵ The word "Commissioner" has to be substituted by the word "Commission" to bring it in accord with the Constitution

¹³⁶ Section 7 The Senate (Election) Act, 1975

¹³⁷ The word "Commissioner" has to be substituted by the word "Commission" to bring it in accord with the Constitution

¹³⁸ Section 8 The Senate (Election) Act, 1975

¹³⁹ The word "Commissioner" has to be substituted by the word "Commission" to bring it in accord with the Constitution

¹⁴⁰ Section 10, The Senate (Election) Act, 1975

¹⁴¹ The word "Commissioner" has to be substituted by the word "Commission" to bring it in accord with the Constitution.

¹⁴² The word "Commissioner" has to be substituted by the word "Commission" to bring it in accord with the Constitution

- (a) a day for the nomination of candidates;
- (b) a day for the scrutiny of nomination papers;
- (c) a day on or before which candidature may be withdrawn; and
- (d) a day for the taking of the poll and the place at which the poll shall be taken.

93. Supply of list of voters.¹⁴³— The **Commission**¹⁴⁴ shall provide the Returning Officer with a list of voters of the Province for the Senate election.

94. Polling Stations.¹⁴⁵— The **Commission**¹⁴⁶ shall provide a polling station for the purpose of election of members of Senate by the members of a Provincial Assembly.

95. Nomination for election.¹⁴⁷—(1) A voter from a Province may propose or second the name of any person qualified for election to the Senate from that Province:

(2) Every nomination shall be made by a separate nomination paper in the prescribed form signed both by the proposer and the seconder and shall, on solemn affirmation made and signed by the candidate, accompany—

- (a) a declaration that he has consented to the nomination and that he fulfils the qualifications specified in Article 62 and is not subject to any of the disqualifications specified in Article 63 or any other law for the time being in force for being elected as a member;¹⁴⁸
- (b) a declaration about his party affiliation, if any;
- (c) a declaration that no loan for an amount of two million rupees or more, obtained from any bank, financial institution, cooperative society or corporate body in his own name or in the name of his spouse or any of his dependents, or any business concern mainly owned by him or the aforesaid; stands unpaid for more than one year from the due date, or has got such loan written off;
- (d) a declaration that he, his spouse or any of his dependents or a business concern mainly owned by him or the aforesaid, is not in default in payment of **taxes**,¹⁴⁹ government dues or utility charges, including telephone, electricity, gas and water charges of an amount in excess of ten thousand rupees, for over six months, at the time of filing of nomination papers;
- (e) a statement specifying his educational qualifications, occupation,

¹⁴³ Section 9, The Senate (Election) Act, 1975

¹⁴⁴ The word "Commissioner" has to be substituted by the word "Commission" to bring it in accord with the Constitution.

¹⁴⁵ Section 6, The Senate (Election) Act, 1975

¹⁴⁶ The word "Commissioner" has to be substituted by the word "Commission" to bring it in accord with the Constitution.

¹⁴⁷ Section 11, The Senate (Election) Act, 1975

¹⁴⁸ It is the demand of the Parliamentarians to point it out in the relevant provision of law as well as in nomination form.

¹⁴⁹ This seems to be an omission in the original text.

National Identity Card number and National Tax Number, if any, along with attested copies thereof; and

- (f) a statement of his assets and liabilities and those of his spouse and dependents on the prescribed form as on the preceding thirtieth day of June.

Explanation.—For the purpose of this section, the expression—

- i. "**loan**" shall mean any loan, advance, credit or finance obtained or written off on or after the 31st day of December, 1985, but shall not include the loan the recovery of which has been stayed or suspended by any order of a court or tribunal, including the High Court and the Supreme Court.
- ii. "**mainly owned**" shall mean holding or controlling a majority interest in a business concern;
- iii. "**taxes**" include all taxes levied by Federal Government, Provincial Government or a Local Government, but shall not include taxes that recovery of which has been stayed or suspended by any order of a court or tribunal;
- iv. "**government dues and utility charges**" shall, *inter alia*, include rent, charges of rest houses or lodges owned by the Federal Government, Provincial Governments, Local Governments or corporations established or controlled by such governments, but shall not include the government dues and utilities charges the recovery of which has been stayed or suspended by any order of a court or tribunal.

(3) Every nomination paper shall be delivered to the Returning Officer by the candidate or by his proposer or seconder or if, so authorized in writing by the candidate, by his nominee and the Returning Officer shall acknowledge receipt of the nomination paper specifying the date and time of receipt.¹⁵⁰

(4) A person may be nominated by not more than five nomination papers.

(5) Every proposal shall be accompanied by a certified copy of the relevant extract from the electoral roll in which the name of the person nominated is enrolled.

(6) The nomination form and accompanying declarations and statements shall be open to inspection by the public, and copies thereof may be made available by the Commission in such manner and on payment of such fee as may be prescribed.

96. Deposit¹⁵¹.—(1) Subject to the provisions of sub-section (2), no nomination paper delivered under section 95 shall be accepted unless—

- (a) a sum of **ten**¹⁵² thousand rupees is deposited in cash by the

¹⁵⁰ This provision has been made in conformity with Section 58(3) of ROPA.

¹⁵¹ Section 12, The Senate (Election) Act, 1975

¹⁵² The present amount of Deposit is too meager and is required to be suitably increased.

candidate or by any person on his behalf at the time of its delivery; or

- (b) it is accompanied by a receipt showing that a sum as aforesaid has been deposited by the candidate or by any person on his behalf at any branch of the National Bank of Pakistan or at a Government Treasury or sub-Treasury.

(2) Not more than one deposit under sub-section (1) shall be required in the case of a person who has been nominated as a candidate by more than one nomination papers.

97. Scrutiny.¹⁵³—(1) The candidates, their proposers and seconders, and an agent authorized in writing in this behalf by each candidate, may attend the scrutiny of the nomination papers, and the Returning Officer shall give them reasonable opportunity for examining all nomination papers delivered to him under section 95.

(2) The Returning Officer shall, in the presence of the persons attending the scrutiny under sub-section (1), examine the nomination papers and decide any objection raised by any such person to any nomination.

(3) The Returning Officer may, either of his own motion or upon any objection, conduct such summary inquiry as he may think fit and reject any nomination paper if he is satisfied that—

- (a) the candidate is not qualified to be elected as a member;
- (b) the proposer or the seconder is not qualified to subscribe to the nomination paper;
- (c) any provision of section 95 or section 96 has not been complied with or submits any false or incorrect declaration or statement in any material particular; or
- (d) the signature of the proposer or seconder is not genuine:

Provided that—

- i. the rejection of a nomination paper shall not invalidate the nomination of a candidate by any other valid nomination paper;
- ii. the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow any such defect to be remedied forthwith; and
- iii. the Returning Officer shall not inquire into the correctness or validity of any entry in the electoral roll.

(4) The Returning Officer may, for the purpose of scrutiny, require any agency or authority to produce any document or record.

(5) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting it and shall, in the case of rejection, record a

¹⁵³ Section 13, The Senate (Election) Act, 1975

brief statement of the reasons therefor.

(6) Where the nomination of a candidate has been rejected or accepted under this section ¹⁵⁴ by a Returning Officer, an appeal shall lie, within two days of the scrutiny day, to the Commission; or a member of the Commission authorized by the Commission ; and any order passed by the Commission or such member, as the case may be, on such appeal shall be final:

(7) If the Commission or, as the case may be, Member of the Commission referred to in sub-section (6), is, on the basis of information or material coming to its or his knowledge from any source, satisfied that a candidate whose nomination paper has been accepted is a defaulter of loans, taxes, government dues or utility charges or has had any loan written off or is subject to any other disqualification from being elected as a member of Senate, it or he may, on its or his own motion, call upon such candidate to show cause why his nomination should not be rejected, and if it or he is satisfied that the candidate is defaulter as aforesaid or has had a loan written off or is subject to any disqualification, it or he may reject his nomination paper.

98. Publication of the list of candidates.¹⁵⁵—(1) The Returning Officer shall, after the scrutiny of nomination papers, prepare and publish in the prescribed manner a list of candidates who have been validly nominated.

(2) In case an appeal against rejection or, as the case may be, acceptance of a nomination paper, is accepted by the Commission or Member of the Commission referred to in sub-section (7) of section 97, the list of validly nominated candidates shall be revised accordingly.

99. Withdrawals.¹⁵⁶—(1) Any validly nominated candidate may, by notice in writing signed by him and delivered to the Returning Officer on or before the withdrawal date either by the candidate himself or through an agent duly authorized in writing by him, withdraw his candidature.

Explanation.—Authorisation in favour of an agent shall be attested by a competent authority, such as Oath Commissioner or a Notary appointed under the Notaries Ordinance 1961 (XIX of 1961).

(2) A notice of withdrawal under sub-section (1) shall, in no circumstances, be open to recall or cancellation.

(3) On receiving a notice of withdrawal under sub-section (1), the Returning Officer shall, if he is satisfied that the signature on the notice is that of the candidate, cause a copy of the notice to be affixed at some conspicuous place in his office.

(4) The Returning Officer shall, on the day next following the withdrawal day, prepare and publish in the prescribed manner a list of contesting candidates and forward a copy thereof to each such candidate, giving public

¹⁵⁴ For election to assemblies there is a provision that an appeal can also be filed against acceptance of nomination papers. The same provision has been suggested for Senate Elections.

¹⁵⁵ Section 14, The Senate (Election) Act, 1975

¹⁵⁶ Section 15, The Senate (Election) Act, 1975

notice of the date, hour and place of the poll.

100. Death of a candidate after nomination.¹⁵⁷—(1) If a validly nominated candidate who has not withdrawn his candidature dies before the day for taking of the poll, the Returning Officer shall, by public notice, terminate such proceedings **only for the category for which he had filed the nomination papers**¹⁵⁸ and make a report to the Commission.

(2) Where the proceedings relating to an election have been terminated under sub-section (1), fresh proceedings shall be commenced in accordance with the provisions of this Act as if for a new election:

Provided that it shall not be necessary for other contesting candidates to file fresh nomination papers or make a further deposit under section ---.

101. Postponement, etc., under certain circumstances.¹⁵⁹—Where the proceedings relating to nomination, scrutiny or withdrawal cannot, for reasons beyond the control of the Returning Officer, take place on the day appointed therefor, he may postpone or adjourn such proceedings and shall, with the approval of the **Commission**¹⁶⁰, by public notice fix another day for the proceedings so postponed or adjourned, and, if necessary, also the day or days for any subsequent proceedings.

102. Uncontested election.¹⁶¹—(1) Where after scrutiny under section 97 or withdrawal under section 99, the number of validly nominated candidates or, as the case may be, the contesting candidates from a Province is less than or equal to the number of seats to be filled for that Province, the Returning Officer shall, by public notice declare such candidates to be elected to the seats and send a return of election to the **Commission**¹⁶²:

Provided that, if after scrutiny any candidate indicates that he intends to file an appeal under sub-section (6) of section 97 against the rejection of his nomination paper, no person shall be declared elected uncontested until the period for filing such appeal has expired and no such appeal has been filed, or where an appeal is filed, until the disposal of such appeal.

(2) The **Commission**¹⁶³ shall publish in the official Gazette the names of the returned candidates.

(3) Where the number of candidates declared elected under sub-section (1) is less than the number of seats to be filled, fresh proceedings shall be commenced in accordance with the provisions of this Act as if for a new election, to fill the seat or, as the case may be, seats remaining vacant.

¹⁵⁷ Section 16, The Senate (Election) Act, 1975

¹⁵⁸ To make it in consonance with section 18 of ROPA.

¹⁵⁹ Section 17, The Senate (Election) Act, 1975

¹⁶⁰ The word "Commissioner" has to be substituted by the word "Commission" to bring it in accord with the Constitution after the 18th Amendment.

¹⁶¹ Section 18, The Senate (Election) Act, 1975

¹⁶² The word "Commissioner" has to be substituted by the word "Commission" to bring it in accord with the Constitution after the 18th Amendment.

¹⁶³ The word "Commissioner" has to be substituted by the word "Commission" to bring it in accord with the Constitution after the 18th Amendment.

103. Contested election.¹⁶⁴— If after withdrawals, if any, the number of candidates exceeds the number of seats, the Returning Officer shall, on the appointed day, conduct the poll, after giving a notice thereof to the contesting candidates.

104. Hours of poll.¹⁶⁵— The Returning Officer shall, subject to any direction of the **Commission**,¹⁶⁶ fix the hours during which the poll shall be taken and give public notice of the hours so fixed.

105. Adjourned poll.¹⁶⁷—(1) If at any time the poll is interrupted or obstructed for reasons beyond the control of the Returning Officer, he may stop the poll and, when he so stops the poll, shall inform the **Commission**¹⁶⁸ of his having done so.

(2) Where a poll is stopped under sub-section (1), the Returning Officer shall, immediately report the circumstances to the Commission and as soon as may be, appoint, with the approval of the **Commission**,¹⁶⁹ a day for a fresh poll and fix the place at which, and the hours during which, such fresh poll shall be taken.

(3) All voters shall be allowed to vote at the fresh poll taken under sub-section (2) and no vote cast at the poll stopped under sub-section (1) shall be counted.

106. Voting procedure.¹⁷⁰—(1) All voters shall be entitled to vote at an election.

(2) No vote shall be given by proxy.

(3) Each voter shall have only one transferable vote irrespective of the number of seats to be filled.

(4) A voter shall cast his vote in the prescribed manner.

(5) The ballot papers shall be in such form as the Commission may specify.

107. Proceedings at the close of poll.¹⁷¹—(1) Immediately after the close of poll, the Returning Officer shall proceed with the counting of votes in the prescribed manner.

(2) On the completion of counting, the Returning Officer shall prepare and certify a return of the election and submit the same to the **Commission**¹⁷² in the prescribed manner.

(3) Every returned candidate shall, within five days from the date of election, submit return of election expenses in accordance with the provisions of section 121.

¹⁶⁴ Section 19, The Senate (Election) Act, 1975

¹⁶⁵ Section 20, The Senate (Election) Act, 1975

¹⁶⁶ The word "Commissioner" has to be substituted by the word "Commission" to bring it in accord with the Constitution after the 18th Amendment.

¹⁶⁷ Section 22, The Senate (Election) Act, 1975

¹⁶⁸ The functions of the Commissioner are now entrusted to the Commission due to the 18th Amendment.

¹⁶⁹ The functions of the Commissioner are now entrusted to the Commission due to the 18th Amendment.

¹⁷⁰ Section 23, The Senate (Election) Act, 1975

¹⁷¹ Section 24, The Senate (Election) Act, 1975

¹⁷² The functions of the Commissioner are now entrusted to the Commission.

108. Declaration of result of election. ¹⁷³— On receipt of the returns of the election under sub-section (2) of section 107, the Commission shall publish in the official Gazette the names of the returned candidates:

Provided that the name of a candidate shall not be published who fails to submit the return of election expenses as required by sub-section (3) of section 107.

109. Appeal against count ¹⁷⁴.—(1) A contesting candidate who is aggrieved by any proceedings under section 107 relating to the count may prefer an appeal challenging the count to the **Commission** ¹⁷⁵.

(2) An appeal under sub-section (1) may be made by the candidate in person, or through a person authorized in writing by the candidate in this behalf, within three days next following the date of the completion of the count under section 107.

(3) The appeal shall be addressed to the Commission and filed with the **Secretary Election Commission**. ¹⁷⁶

(4) The appeal shall be in the form of a memorandum which shall state the grounds for such appeal and shall be accompanied by copies of receipts to the effect that he has served a copy of the appeal personally or by registered post on each contesting candidate.

(5) The **Commission** ¹⁷⁷ may, after giving the parties concerned an opportunity of being heard,—

- (a) dismiss the appeal; or
- (b) if it does not dismiss the appeal, determine the result of the election on the count of valid votes as corrected, after adjudicating upon the invalid votes, if any, and make such consequential order as may be necessary.

(6) The decision of the **Commission** ¹⁷⁸ on appeal under sub-section (5) shall be final.

(7) No question that can be settled in an appeal under this section shall be raised by an election petition or before any court or authority whatsoever, nor shall any question that can be raised by an election petition be raised before any court or authority other than an Election Tribunal. ¹⁷⁹

110. Commission to have certain powers of a court. ¹⁸⁰— For the purpose of the disposal of an appeal under section 110, the **Commission** ¹⁸¹ shall have the same powers as are vested in a court under the Civil Procedure Code, 1908 (Act V of 1908), when trying a suit in respect of the following

¹⁷³ Section 25, The Senate (Election) Act, 1975

¹⁷⁴ Section 32 The Senate Election Act 1975.

¹⁷⁵ The functions of the Commissioner are now entrusted to the Commission due to the 18th Amendment.

¹⁷⁶ The functions of the Commissioner are now entrusted to the Commission due to the 18th Amendment.

¹⁷⁷ The functions of the Commissioner are now entrusted to the Commission due to the 18th Amendment

¹⁷⁸ The functions of the Commissioner are now entrusted to the Commission due to the 18th Amendment

¹⁷⁹ Sub-section (2) of section 31 of the Senate (Election) Act, 1975 added here.

¹⁸⁰ Section 33 The Senate Election Act 1975.

¹⁸¹ The functions of the Commissioner are now entrusted to the Commission due to the 18th Amendment

matters, that is to say,—

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the discovery and production of documents, articles or things;
- (c) issuing commissions for the examination of witnesses;
- (d) requiring the deposit of diet and travelling expenses of witnesses;
- (e) receiving evidence on affidavits;
- (f) granting adjournments; and
- (g) summoning and examining *suo moto* any person whose evidence appears to be material.

111. Return or forfeiture of deposit.— (1) After the termination of the proceedings relating to an election under section 100 where the proceedings have been so terminated, or after the declaration of results of an election under section 102 or section 108, the deposit made under section 96 in respect of any candidate shall be returned to the person making it or to his legal representatives, except the deposit in respect of a candidate for whom no voter has either voted or indicated any preference.

(2) A deposit which is not required to be returned under sub-section (1) shall be forfeited to the Federal Government.

112. Casual vacancies.¹⁸²—(1) When, before the expiration of the term of office of a member elected to the Senate, his seat becomes vacant or is declared vacant or his election to the Senate is declared void, the **Commission**¹⁸³ shall, by notification in the official Gazette, call upon the elected members of the Provincial Assembly by the members of which the member was elected to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification; and the provisions of this Act and of the rules shall apply, as far as may be, in relation to the election of a member to fill such vacancy.

(2) When the seats of two or more members who were elected to the Senate by the same Provincial Assembly and whose term of office was due to expire on the same day become vacant simultaneously, elections to fill such seats may be held together.

Provided that when the seats of two or more members who were elected to the Senate by the same Provincial Assembly and whose term of office was due to expire on different dates become vacant simultaneously, elections to fill such seats may be held separately.

113. Extension of time for completion of election.¹⁸⁴— It shall be

¹⁸² Section 77 of the Senate Election Act 1975.

¹⁸³ The functions of the Commissioner are now entrusted to the Commission due to the 18th Amendment.

¹⁸⁴ Section 81, The Senate Election Act 1975.

competent for the Commission,¹⁸⁵ for reasons which it considers sufficient, to extend the time for the completion of any election of Senate by making necessary amendments in the notification issued under section 92.

114. Term of office.¹⁸⁶—(1) The term of office of a member of the Senate shall commence on the date of the first meeting of the Senate held after the names of the persons elected to the Senate are notified by the Commission¹⁸⁷.

Provided----- (omitted)¹⁸⁸

(2) If the election of a member of Senate is declared void and another candidate is declared to have been duly elected in his place, the term of such candidate shall be the unexpired term of such member.

(3) If the election of all the members declared elected under section 102 or section 108 is declared void, the term of the members elected in their places shall be the unexpired term of the members whose election is declared void.

115. Vacancy in membership of Provincial Assembly not to invalidate election.¹⁸⁹— No election by the members of a Provincial Assembly shall be called in question on the ground merely of the existence of any vacancy in the membership of the Assembly.

116. Drawing of lots for determining term of office of individual members.¹⁹⁰— (1) For the purpose of dividing the members into two groups, the Commission shall draw lots in the prescribed manner and in the presence of such members or persons authorized by them in writing as may be present, after notifying in the official gazette the time and place of drawing of lots.

(2) The term of office of each member determined under sub-section(1) shall be notified by the Commission in the official gazette.

(3) If the election of a member whose term of office is determined under sub-section(1) is declared void and another candidate is declared to have been duly elected in his place, the term of such candidate shall be the unexpired term of such member.

(4) If the election of all the members is declared void, the members elected in their place shall be divided into two groups and the term of their office be determined and notified in the manner specified in sub-sections (1) and (2):

Provided that the term of office of the members so elected shall be the unexpired term of the members of the respective groups.

¹⁸⁵ The functions of the Commissioner are now entrusted to the Commission due to the 18th Amendment.

¹⁸⁶ Section 82, The Senate Election Act 1975.

¹⁸⁷ The functions of the Commissioner are now entrusted to the Commission due to the 18th Amendment

¹⁸⁸ The proviso was for first election under the constitution and has now become redundant.

¹⁸⁹ Section 83, The Senate Election Act 1975

¹⁹⁰ Section 82A, The Senate Election Act 1975

CHAPTER VIII ELECTION EXPENSES

117. Definitions¹⁹¹— For the purpose of this Act, “election expenses” means any expenditure incurred before, during and after an election or payment made, whether by way of gift, loan, advance, deposit or otherwise, for the arrangement, conduct or benefit of, or in connection with or incidental to the election of a candidate, including the expenditure on account of issuing circulars or publications or otherwise presenting to the voters the candidate or his views, aims or objects, but does not include the deposit made under **section 56 or section 96**.

118. Restriction on election expenses.¹⁹²— (1) No person other than the candidate shall incur any election expenses of such candidate:

Provided that where any person incurs any election expenses on behalf of such candidate, whether for stationery, postage,¹⁹³ advertisement, transport or for any other item whatsoever, such expenses shall be deemed to be the election expenses incurred by the candidate himself.

(2) The election expenses of a contesting candidate shall not exceed¹⁹⁴,-

- (a) **two million** rupees for election to a seat in the Senate;
- (b) **six million** rupees for election to a seat in the National Assembly; and
- (c) **four million** rupees for election to a seat in a Provincial Assembly.

(3) A candidate shall, through bills, receipts and other documents, vouch for every payment made in respect of election expenses, except where the amount is less than one thousand¹⁹⁵ rupees.

119. Bank account for election expenses. — (1) For the purposes of his election expenses, a candidate shall open an exclusive account with any branch of a scheduled bank before the date fixed for scrutiny of nomination papers, and maintain or cause to be maintained a register of receipts and expenditures:

Provided that no transaction towards the election expenses shall be made through an account other than the account opened for the purpose.

(2) A candidate may open the aforesaid bank account with an amount not exceeding the limit of election expenses provided under sub-section (2) of section 118.

(3) Each contesting candidate shall submit to the District Returning Officer on every Thursday of the campaign period, a statement of election expenses made by him during the preceding week.

¹⁹¹ Section 48, The Representation of the People Act 1976 and Section 27, The Senate (Election) Act 1975.

¹⁹² Section 49, The Representation of Peoples Act 1976 and Section 28, The Senate (Election) Act 1975.

¹⁹³ LFC is of the view that the Telegram is no more in use and hence may be deleted.

¹⁹⁴ The existing ceiling for election expenditure was fixed in 2002 and is required to be realistically increased.

¹⁹⁵ LFC is of the view that the amount is required to be increased keeping in view the current status of inflation.

120. Monitoring of election campaign, etc. (1). Constituency Monitoring teams consisting of such number of members as may be determined by the Commission, shall monitor election campaign of the candidates, and shall report to the District Returning Officer on daily basis, violation by the candidates of any law, rule or provisions of the code of conduct issued by the Commission

(2) The report mentioned in sub-section (1) shall be in the format approved by the Commission and shall be sent in the manner to be determined by the Commission.

(3) The Commission may appoint a team mentioned in sub-section (1), on the terms and conditions to be determined by it, for a constituency or for a group of constituencies from amongst officers of the Federal Government or members of general public who are known for high moral integrity and enjoy good reputation.

Comment [s7]: Suggestion: The officers of Provincial Governments and autonomous corporations/bodies may also be included.

Comment [s8]: Suggestion: This may be substituted with retired government or armed forces officers enjoying good reputation and high moral integrity.

(4) The District Returning Officer, on receipt of reports mentioned in sub-section (1), shall send a consolidated report to the Provincial Election Commissioner of the Province on the last working day of every week commencing from the last day fixed for withdrawal of nominations till the day following the polling day.

121. Return of election expenses.¹⁹⁶— (1) Every contesting candidate, other than the returned candidate, shall submit the return of his election expenses within thirty days of the publication of the name of the returned candidate.

(2) Every returned candidate shall, within ten days from the poll of an election, submit a return of election expenses, failing which the result of such candidate shall not be published.

(3) The return of election expenses of the returned candidate and of every contesting candidate referred to in sub-sections (1) and (2) shall be submitted to the Returning Officer in the prescribed form containing—

- (a) a statement of all payments made by him together with all bills and receipts;
- (b) a statement of all disputed claims, if any, of which the contesting candidate is aware;
- (c) a statement of all unpaid claims, if any, of which the contesting candidate is aware; and
- (d) a statement of all moneys, securities or equivalent of money received from, or spent, by any person for the benefit of the candidate, specifying the name of every such person.

(4) The returns submitted under sub-section (3) shall be accompanied by an affidavit of the candidate in the prescribed form.

¹⁹⁶ Section 50, The Representation of Peoples Act 1976 and Section 29 The Senate (Election) Act 1975.

122. Inspection of returns.¹⁹⁷—(1) The returns and documents submitted under section 121 shall be kept by the Returning Officer in his office or at such other convenient place as he may think fit and shall, during one year from the date of their receipt by him, be open to inspection by any person on payment of the prescribed fee.

(2) The Returning Officer shall, on an application made in this behalf and on payment of the prescribed fee, give any person copies of any return or document kept under sub-section (1) or of any part thereof.

123. Removal and remission of disqualification¹⁹⁸.— The **Commission**¹⁹⁹ may, on an application made in this behalf, remit any disqualification for failure to submit the return of election expenses or for any error or incorrect statement in such return, if it is satisfied that such failure or error occurred or incorrect statement was made due to circumstances beyond the control of the applicant.

¹⁹⁷ Section 30, The Senate (Election) Act 1975 and Section 51 of The Representation of People Act 1976

¹⁹⁸ Section 80, The Senate (Election) Act 1975.

¹⁹⁹ The word "Commissioner" has been replaced with the word "Commission" due to the 18th Amendment.

CHAPTER IX ELECTION DISPUTES

124. Election petition.²⁰⁰— (1) No election shall be called in question except by an election petition made by a candidate for that election (hereinafter in this Chapter referred to as the petitioner).

(2) An election petition shall be presented to the Commission within forty-five days of the publication in the official Gazette of the name of the returned candidate and shall be accompanied by a receipt showing that the petitioner has deposited at any branch of the National Bank of Pakistan or at a Government Treasury or sub-Treasury in favour of the Commission, under the prescribed head of account, as security for the costs of the petition, a sum of **five** thousand rupees.²⁰¹

125. Presentation of petition.²⁰²—(1) An election petition shall be presented by a petitioner and shall be deemed to have been presented—

- (a) when it is delivered in person to the Secretary to the Commission or to such other officer as may be appointed by the Commission in that behalf;
 - i. by the petitioner; or
 - ii. by a person authorised in writing in this behalf by the petitioner
- (b) when delivered by registered post to the Secretary to the Commission or to such other officer as aforesaid.

(2) An election petition, if sent by registered post, shall be deemed to have been presented in time if it is posted within the period specified in sub-section (2) of **section 124**.

(3) The Tribunal shall issue notice to the respondents through Bailiff, Registered post or courier service and by way of publication in two daily newspapers widely circulated at the cost of the petitioner.²⁰³

126. Parties to the petition²⁰⁴.— The petitioner shall join as respondents to his election petition—

- (a) **returned candidate**²⁰⁵; and
- (b) any other candidate against whom any allegation of any corrupt or illegal practice is made, and shall serve personally or by registered post on each such respondent a copy of the petition.

Explanation: In this section and in the following provisions of this Chapter, “corrupt or illegal practice” means a “corrupt practice or an illegal practice”

²⁰⁰ Section 52 The Representation of Peoples Act 1976 and Section 31 The Senate (Election) Act 1975

²⁰¹ The amendment is suggested to discourage frivolous petitions.

²⁰² Section 53 The Representation of Peoples Act 1976.

²⁰³ Recommendation of Standing Committee.

²⁰⁴ Section 35 The Senate (Election) Act 1975 and Section 54, The Representation of People Act 1976

²⁰⁵ Recommendation of Standing Committee.

within the meaning of Chapter VI.

127. Contents of petition.²⁰⁶—(1) Every election petition shall contain—

- (a) a precise statement of the material facts on which the petitioner relies;
- (b) full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed, including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice or illegal act and the date and place of the commission of such practice or act; and
- (c) the relief claimed by the petitioner.

(2) A petitioner may claim as relief any of the following declarations, namely—

- (a) that the election of the returned candidate is void; or
- (b) that the election of the returned candidate is void and that the petitioner or some other person has been duly elected; or
- (c) that the election as a whole is void.

(3) An election petition and the schedule or annex to that petition shall be signed by the petitioner and the petition only shall be verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings.²⁰⁷

128. Procedure on receipt of petition.²⁰⁸—(1) if the Commission finds that any provision of section 124, 125 or 126 has not been complied with, the petitioner shall be directed to make up the deficiency within a period of seven days:

Provided that if the petitioner fails to make up the deficiency within the aforesaid period, the Commission shall dismiss the petition.

(2) If an election petition is not dismissed under sub-section (1), the Commission shall refer it for trial to a Tribunal.

129. Appointment of Tribunal.²⁰⁹—(1) For the trial of election petitions under this Act, the Commission²¹⁰ shall appoint as many Election Tribunals as may be necessary.

(2) An Election Tribunal shall consist of a person who is a Judge of a High

²⁰⁶ Section 55 The Representation of Peoples Act 1976 and Section 36 The Senate (Election) Act 1975

²⁰⁷ Recommendation of Standing Committee.

²⁰⁸ The previous provision was "If the Commission²⁰⁸ finds that any provision of sections, 111, 112 or 113 has not been complied with, the petition shall be dismissed forthwith.

(2) If an election petition is not dismissed under sub-section (1), the Commission²⁰⁸ shall refer it for trial to a Tribunal."

²⁰⁹ Section 57, The Representation of Peoples Act 1976. The word Commission has been added to this section in place of Tribunal.

²¹⁰ The word "Commissioner" has been replaced with the word "Commission" due to the 18th Amendment.

Court.

130. Power to transfer petition.²¹¹— The Commission,²¹² either of its own motion or on an application made in this behalf by any of the parties, may, at any stage, transfer an election petition from one Tribunal to another Tribunal and the Tribunal to which the election petition is so transferred—

- (a) shall proceed with the trial of the petition from the stage from which it is transferred; and
- (b) may, if it thinks fit, recall and examine any of the witnesses already examined.

131. Place of trial²¹³.— The trial of an election petition shall be held at such place or places as the Tribunal may think fit.

132. Advocate-General to assist the Tribunal²¹⁴.— The Advocate-General for a Province shall, if a Tribunal so requires, assist the Tribunal at the hearing of an election petition in such manner as it may require.

133. Appearance before Tribunal²¹⁵.— Any appearance, application or act before a Tribunal may be made or done by a party in person or by an advocate or any other person entitled or allowed to plead in a civil court and duly appointed to act on his behalf:

Provided that the Tribunal may, where it considers it necessary, direct any party to appear in person.

134. Procedure before Tribunal²¹⁶.—(1) Subject to the provisions of this Act and the rules, every election petition shall be tried in accordance with the procedure prescribed under the rules.²¹⁷

(2) Subject to the provisions of this Act, the Qanun-e-Shahadat Order, 1984 (P.O. No. X of 1984)²¹⁸, shall apply for the trial of an election petition.

(3) The Tribunal may, at any time, upon such terms and on payment of such fee as it may direct, allow a petition to be amended in such manner as may, in its opinion, be necessary for ensuring a fair and effective trial and for determining the real questions at issue, so however that no new ground of challenge to the election is permitted to be raised.

(4) At any time during the trial of an election petition, the Tribunal may call upon the petitioner to deposit such further sum by way of security, in addition to the sum deposited under section 124 as it may think fit.

135. Dismissal of petition during trial.²¹⁹— The Tribunal shall dismiss an election petition, if—

²¹¹ Section 58, The Representation of Peoples Act 1976 and Section 39 The Senate (Election) Act 1975

²¹² The functions of the Commissioner have now been entrusted to the Commission

²¹³ Section 40 The Senate Election Act 1975 and section 59 The Representation of the People Act 1976

²¹⁴ Section 41 The Senate Election Act 1975 and section 60 The Representation of the People Act 1976

²¹⁵ Section 42 The Senate Election Act 1975 and section 61 The Representation of the People Act 1976

²¹⁶ Section 43 The Senate Election Act 1975 and section 62 The Representation of the People Act 1976

²¹⁷ LFC is of the view that if procedure is prescribed under the rules, it will have more force in regulating disposal of election petitions.

²¹⁸ Recommendation of Standing Committee.

²¹⁹ Section 63, The Representation of Peoples Act 1976 and Section 44 The Senate (Election) Act 1975.

- (a) the provisions of section 124 and section 125 have not been complied with; or
- (b) the petitioner fails to make the further deposit required under sub-section (4) of section 134.

136. Power of the Tribunal²²⁰.—(1) The Tribunal shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), and shall be deemed to be a civil court within the meaning of sections 476, 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(2) For the purpose of enforcing attendance of witnesses, the local limits of the jurisdiction of the Tribunal shall be the territories to which this Act extends.

137. Further provision relating to evidence and witnesses²²¹.—

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no document shall be inadmissible in evidence at the trial of an election petition only on the ground that it is not duly stamped or registered.

(2) No witness shall be excused from answering any question as to any matter in issue, or relevant to a matter in issue, in the trial of an election petition upon the ground that the answer to such question may incriminate or tend to incriminate him or that it may expose or tend to expose him to any penalty or forfeiture; but no witness shall be required or permitted to state for whom he has voted at an election.

(3) A witness who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the Tribunal and an answer given by him to a question put by or before the Tribunal shall not, except in the case of any criminal proceeding for perjury in respect of his evidence, be admissible in evidence against him in any civil or criminal proceedings.

(4) A certificate of indemnity granted to any witness under sub-section (3) may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IXA of the Pakistan Penal Code (Act LXV of 1860), or under this Act, arising out of the matters to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by any law for the time being in force.

(5) The reasonable expenses incurred by any person in attending to give evidence may be allowed to him by the Tribunal and shall, unless the Tribunal otherwise directs, be deemed to be part of the costs.

138. Recrimination where seat is claimed²²².—(1) Where in an election petition a declaration is claimed that a candidate other than the

²²⁰ Section 45 The Senate Election Act 1975 and Section 64 ,The Representation of Peoples Act 1976

²²¹ Section 46 The Senate Election Act 1975 and Section 65 The Representation of the People Act 1976

²²² Section 47 The Senate Election Act 1975 and Section 66 The Representation of the People Act 1976

returned candidate has been duly elected, the returned candidate or any other party may produce evidence to prove that the election of such other candidate would have been declared void had he been the returned candidate and had a petition been presented calling his election in question:

Provided that the returned candidate or such other party as aforesaid shall not be entitled to give such evidence unless he or it has, within the fourteen days next following the commencement of the trial, given notice to the Tribunal of his or its intention so to do and has also deposited the security referred to in section 124.

(2) Every notice referred to in sub-section (1) shall be accompanied by a statement of the case, and all the provisions relating to the contents, verification, trial and procedure of an election petition, or to the security deposit in respect of an election petition, shall apply to such a statement as if it were an election petition.

139. Decision of the Tribunal.²²³—(1) The Tribunal may, upon the conclusion of the trial of an election petition, make an order—

- (a) dismissing the petition;
- (b) declaring the election of the returned candidate to be void;
- (c) declaring the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected; or
- (d) declaring the election as a whole to be void.

(2) The Tribunal shall proceed with the trial of the election petition on day to day basis and no adjournment shall be granted to any party for more than seven days and that too on payment of costs as the tribunal may determine, and the decision thereof shall be taken within **Six**²²⁴ months from its receipt:

Provided that:

- i. where a petition is not decided within four months, further adjournment sought by any party shall be granted only on payment of special cost of ten thousand rupees per adjournment and adjournment shall not be granted for more than three days.
- ii. if the Tribunal itself adjourns it shall record reasons for such adjournment;
- iii. where the delay in the proceedings is occasioned by any act or omission of a returned candidate or any other person acting on his behalf, the Tribunal itself, or on application of the aggrieved party, shall after issuance of the show cause notice to the

²²³ Section 67, The Representation of Peoples Act 1976 and Section 48 The Representation of the People Act 1976.. For consistency these sub-provisions have been renamed from the original, with sub-provision (1A) being renamed (2), (2) being renamed (3), and (3) being renamed (4).

²²⁴ LFC thinks that four month period is too short for the propose.

returned candidate, within fifteen days from the date of show cause notice, may order that the returned candidate has ceased to perform the functions of his office either till the conclusion of the proceedings or for such period as the tribunal may direct.

- iv. after a Judge of a High Court has been appointed as Tribunal, no judicial work other than the election petitions shall be entrusted to him till the final disposal of the election petitions placed before him.²²⁵

(3) Save as provided in sub-section (4), the decision of a Tribunal on an election petition shall be final.

(4) Any person aggrieved by a decision of the Tribunal may, within thirty days of the announcement of the decision, appeal to the Supreme Court which shall be decided within thirty days and the decision of the Supreme Court on such appeal shall be final.

Explanation.— In this sub-section, “decision of the Tribunal” shall not be deemed to include an order made by the Commission in the exercise of its powers under section 10 of this Act.

140. Ground for declaring election of returned candidate void.²²⁶— (1) The Tribunal shall declare the election of the returned candidate to be void if it is satisfied that—

- (a) the nomination of the returned candidate was invalid; or
- (b) the returned candidate was not, on the nomination day, qualified for, or was disqualified from, being elected as a member; or
- (c) the election of the returned candidate has been procured or induced by any corrupt or illegal practice; or
- (d) a corrupt or illegal practice has been committed by the returned candidate or his election agent or by any other person with the consent²²⁷ or connivance of the candidate or his election agent.

(2) The election of a returned candidate shall not be declared void on the ground—

- (a) that any corrupt or illegal practice has been committed, if the Tribunal is satisfied that it was not committed by, or with the consent or connivance of that candidate or his election agent and that the candidate and the election agent took all reasonable precaution to prevent its commission; or
- (b) that any of the other contesting candidates was, on the

²²⁵ Recommendation of the Standing Committee.

²²⁶ Section 68, The Representation of Peoples Act 1976 and Section 49 45 The Senate (Election) Act 1975

²²⁷ Section 49 (1)(d) of the Senate Election Act 1975.

nomination day not qualified for or was disqualified from, being elected as a member.

141. Ground for declaring a person other than a returned candidate elected.²²⁸— The Tribunal shall declare the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected, if it is so claimed by the petitioner or any of the respondents and the Tribunal is satisfied that the petitioner or such other contesting candidate was entitled to be declared elected

142. Ground for declaring election as a whole void.²²⁹— The Tribunal shall declare the election as a whole to be void if it is satisfied that the result of the election has been materially affected by reason of—

- (a) the failure of any person to comply with the provisions of this Act or the rules; or
- (b) the prevalence of extensive corrupt or illegal practice at the election.

143. Decision in case of equality of votes²³⁰.—(1) **In case of election to an Assembly,**²³¹ where, after the conclusion of the trial, it appears that there is an equality of votes between two or more contesting candidates and the addition of one vote for one such candidate would entitle him to be declared elected, the Tribunal shall draw a lot in respect of such candidates and the candidate on whom the lot falls shall be deemed to have received the highest number of votes entitling him to be declared elected.

(2) Before proceeding to draw a lot under sub-section (1), the Tribunal shall give notice to the contesting candidates between whom there is an equality of votes and shall proceed to draw a lot on the day and at the time and place stated in the notice:

Provided that, if the contesting candidates are present when it appears that there is an equality of votes between them, the Tribunal may proceed forthwith to draw a lot without giving notice as aforesaid.

144. Other provisions relating to Tribunal.²³²— (1) An order of the Tribunal under section 139 shall take effect on the date on which it is made and shall be communicated to the **Commission** who shall publish it in the official Gazette.

(2) The Tribunal shall after an election petition has been disposed of, forward the record thereof to the Commission which shall retain it for a period of five years from the date of its receipt and shall thereafter cause it to be destroyed.

145. Withdrawal of petition.²³³—(1) An election petition may be

²²⁸ Section 69, The Representation of Peoples Act 1976.

²²⁹ Section 51 The Senate Election Act 1975 and Section 70 The Representation of the People Act 1976

²³⁰ Section 71 The Representation of Peoples Act 1976.

²³¹ Recommendation of ECPs Committee.

²³² Section 72 The Representation of Peoples Act 1976 and Section 52 The Senate (Election) Act 1975

²³³ Section 73 The Representation of Peoples Act 1976 and Section 53 The Senate (Election) Act 1975

withdrawn:

(a) Before the Tribunal has been appointed, by leave of the Commission; and

(b) After a Tribunal has been appointed, by leave of the Tribunal.²³⁴

(2) Where leave is granted by the Tribunal, the petitioner shall be ordered to pay the costs incurred by the respondents to the election petition or such portion thereof as the Tribunal may direct.

146. Abatement on death of petitioner.²³⁵—(1) An election petition shall abate on the death of a sole petitioner or of the sole survivor of several petitioners.

(2) Where a petition abates under sub-section (1) after a Tribunal has been appointed, notice of the abatement shall be given by the Tribunal to the Commission.²³⁶

147. Death or withdrawal of respondent.²³⁷— If, before the conclusion of the trial of an election petition, a respondent dies or gives notice in the prescribed form that he does not intend to contest the petition, and no respondent remains to contest the petition, the Tribunal shall, without any further hearing, or after giving such person as it may think fit an opportunity of being heard, decide the case *ex-parte*.

148. Failure of petitioner to appear.²³⁸— Where, at any stage of the trial of an election petition, no petitioner makes an appearance, the Tribunal may dismiss the petition for default, and make such order as to costs as it may think fit.

149. Additional powers of Election Tribunal.²³⁹—(1) If a Tribunal, on the basis of any material coming to its knowledge from any source or information laid before it, is of the opinion that a returned candidate was a defaulter of loan, taxes, government dues or utility charges, or has submitted a false or incorrect declaration regarding payment of loans, taxes, government dues or utility charges or has submitted a false or incorrect statement of assets and liabilities of his own, his spouse or his dependents under sections 55 and 95, it may, on its own motion or otherwise, call upon such candidate to show cause why his election should not be declared void and, if it is satisfied that such candidate is a defaulter or has submitted false or incorrect declaration or statement, as aforesaid, it may, without prejudice to any order that may be, or has been made on an election petition, or any other punishment, penalty or liability which such candidate may have incurred under this Act or under any other law for the time being in force, make an order—

²³⁴ Recommendation of Standing Committee.

²³⁵ Section 74 The Representation of Peoples Act 1976 and Section 54 The Senate (Election) Act 1975 The functions of the Commissioner have now been entrusted to the Commission after the 18th Amendment.

²³⁶ This change is inserted due to the 18th Amendment.

²³⁷ Section 75 The Representation of Peoples Act 1976 and Section 55 The Senate (Election) Act 1975

²³⁸ Section 76 The Representation of Peoples Act 1976 and Section 56 The Senate (Election) Act 1975

²³⁹ Section 76A The Representation of Peoples Act 1976 and Section 56A The Senate (Election) Act 1975

- (a) declaring the election of the returned candidate to be void; and
- (b) declaring any other contesting candidate to have been duly elected.

(2) If on examining the material or information referred to in sub-section (1), the Tribunal finds that there appear reasonable grounds for believing that a returned candidate is a defaulter or has submitted a false or incorrect declaration referred to in sub-section (1) it may, pending decision of the motion under sub-section (1), direct that the result of the returned candidate shall not be published in the official Gazette.

(3) No order shall be made under sub-section (1) or sub-section (2) unless the returned candidate has been provided an opportunity of being heard.

150. Order as to costs²⁴⁰.—(1) The Tribunal shall when making an order under section 139, also make an order determining in its discretion the costs and specifying the persons by and to whom such costs are to be paid.

(2) If, in any order as to costs under sub-section (1) there is a direction for the payment of costs by any party to any person, such costs shall, if they have not already been paid, be payable in full and shall, upon application in writing in that behalf made to the Tribunal within **three** months of the order by the person to whom costs have been awarded, be paid, as far as possible, out of the security for costs deposited by such party.

(3) Where no costs have been awarded against a party who has deposited security for costs, or where no application for payment of costs has been made within the aforesaid six months, or where a residue remains after costs have been paid out of the security, such security or the residue thereof, as the case may be, shall, upon application in writing therefor by the person who made the deposit or by his legal representative, be returned by the Tribunal to the person making the application:

Provided that if no application for refund of security or, as the case may be, residue thereof is made after the expiry of the six months of the final decision, such security or as the case may be residue thereof shall stand forfeited in favour of the Federal Government.

(4) Any order for costs may be enforced upon application in writing made to the principal civil court of original jurisdiction of the district in which the person from whom the costs are to be recovered resides or owns property, or of the district in which the constituency, or any part of the constituency or **of a province in case of election to the Senate, as the case may be,**²⁴¹ to which the disputed election relates is situated, as if such order were a decree passed by that court:

²⁴⁰ Section 77 The Representation of Peoples Act 1976 and Section 57 The Senate (Election) Act 1975. The words "Tribunal" are substituted with "Commission".

²⁴¹ Recommendation of ECP's Committee.

Provided that no proceeding shall be brought under this sub-section except in respect of costs which have not been recovered by an application under sub- section (2).

CHAPTER X
OFFENCE, PENALTY AND PROCEDURE²⁴²

he- **151. Corrupt Practice.**²⁴³— A person is guilty of corrupt practice if

- (1) contravenes the provisions of **section 118**;
- (2) is guilty of bribery, personation, undue influence, **capturing of polling station or polling booth**, canvassing in or near polling station **or tampering with papers**²⁴⁴;
- (3) makes or publishes a false statement or submits false or incorrect declaration in any particular material-
 - (a) Concerning the personal character of a candidate or any of his relation calculated to adversely affect the election of such candidate or for the purpose of promoting or procuring the election of another candidate, unless he proves that he had reasonable grounds for believing, and did believe, the statement to be true;
 - (b) Relating to the symbol of a candidate whether or not such symbol has been allocated to such candidate; or
 - (c) Regarding the withdrawal of a candidate; or
 - (d) In respect of his assets and liabilities or any liability with regard to payment of loans, taxes, government dues or utility charges.
- (4) Calls upon or persuades any person to vote, or to refrain from voting, for any candidate on the ground that he belongs to a particular religion, province, community, race, caste, bradari, sect or tribe;
- (5) Knowingly, in order to support or oppose a candidate, lends, employs, hires, borrows or uses any vehicle or vessel for the purposes of conveying to or from the polling station any elector except himself and members of his immediate family; or
- (6) Causes or attempts to cause any person present and waiting to vote at the polling station to depart without voting.

152. Bribery.— A person is guilty of bribery, if he, directly or indirectly, by himself or by any other person on his behalf-

- (1) Receives or agrees to receive or contracts for any gratification for voting or refraining from voting, or for being or refraining from being a candidate at, or for withdrawing or retiring from an election;

- (2) Gives, offers or promises any gratification to any person
 - (a) for the purpose of inducing-
 - (i) a person to be, or to refrain from being, a candidate at an election;
 - (ii) an elector or voter to vote, or refrain from voting, at an election; or
 - (iii) a candidate to withdraw **or retire** from an election; or
 - (b) for the purpose of rewarding-
 - (i) a person for having been, or for having refrained from being, a candidate at an election;
 - (ii) an elector or voter for having voted or refrained from voting at an election; or
 - (iii) a candidate for having withdrawn **or retired** from an election.

Explanation. In this section, “gratification” includes a gratification in money or estimable in money and all forms of entertainment or employment.

153. Personation.— A person is guilty of personation, if he votes, or applies for a ballot paper for voting, as some other person whether that other person is living or dead or fictitious.

154. Undue Influence²⁴⁵— A person is guilty of undue influence if he—

- (1) in order to induce or compel any person to vote or refrain from voting, or to offer himself as a candidate, or to withdraw his candidature or **retire from the contest**, at an election, directly or indirectly, by himself or by any other person on his behalf-
 - (a) makes or threatens to make use of any force, violence or restraint; or
 - (b) inflicts or threatens to inflict any injury, damage, harm or loss;
 - (c) calls down or threatens to call down divine displeasure or the displeasure or disapprobation of any saint or pir; or
 - (d) gives or threatens to give any religious sentence; or
 - (e) uses **or threatens to use** any official influence or governmental patronage; or
 - (f) maligns the Armed Forces of Pakistan; or
 - (g) **enters into an agreement restraining woman from contesting an election or exercising her right to vote;**
- (2) on account of any person having voted or refrained from voting; or having offered himself as a candidate, or having withdrawn his

candidature or having retired , does any of the acts specified in clause (1); or

- (3) directly or indirectly, by himself or by any other person on his behalf,-
- (a) uses any place of religious worship, or any place reserved for the performance of religious rites, for the purpose of canvassing for the votes or for persuading electors or voters to vote, or not to vote, at an election or for a particular candidate; or
 - (b) for any of the purposes specified in sub-clause (a) by words, spoken or written, or by signs or visible representation, publishes anything or does any act prejudicial to the glory of Islam or the integrity, security or defence of Pakistan or any part thereof; or
- (4) by abduction, duress or any fraudulent device or contrivance,--
- (a) impedes or prevents the free exercise of the franchise by an elector or voter; or
 - (b) compels, induces or prevails upon any elector or voter to vote or refrain from voting.

Explanation: In this section, "harm" includes social ostracism or excommunication or expulsion from any caste or community.

155. Capturing of polling station or polling booth etc.²⁴⁶ — A person is guilty of an offence of capturing of polling station or polling booth if he-

- (a) seizes a polling station or a place fixed for the poll or makes polling authorities surrender the ballot papers or ballot box or both and doing of any other act which affects the orderly conduct of elections;
- (b) takes possession of a polling station or a place fixed for the poll and allows his supporters to exercise their right to vote and prevent others from free exercise of their right to vote;
- (c) coerces, intimidates or threatens directly or indirectly any elector or voter and prevents him from going to the polling station or a place fixed for the poll to cast his vote; or
- (d) being in the service of Government or corporations or institutions controlled by the Government commits all or any of the aforesaid activities or aids or connives at, any such activity in the furtherance of the prospects of the election of a candidate.

156. Prohibition of canvassing in or near the polling station.²⁴⁷ —

A person is guilty of an offence of canvassing in or near a polling station if he, within a radius of four hundred meters of a polling station, on the polling day-²⁴⁸

- (a) canvasses for votes;
- (b) solicits the vote of any elector or voter;
- (c) persuades any elector or voter not to vote at the election or for a particular candidate; or
- (d) exhibits, except with the permission of the Returning Officer and at a place reserved for the candidate or his election agent beyond the radius of one hundred meter of the polling station, any notice, sign, banner or flag designed to encourage the electors or voters to vote or discourage the electors or voters from voting, for any contesting candidate.

157. Tampering with papers.²⁴⁹— (1) Except as provided in sub-section (2), a person is guilty of an offence of tampering with papers, if he:-

- (a) Intentionally defaces or destroys any nomination paper, ballot paper or official mark on a ballot paper; or
- (b) Intentionally takes out of the polling station any ballot paper or puts into any ballot box any ballot paper other than the ballot paper he is authorized by law to put in; or
- (c) without due authority,-
 - (i) supplies any ballot paper to any person;
 - (ii) destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers in use for the purpose of election; or
 - (iii) Breaks any seal affixed in accordance with the provisions of this Act;
- (d) Forges any ballot paper or official mark; or
- (e) Causes any delay or interruption in the beginning, conduct or completion of the procedure required to be immediately carried out on the close of the poll.

(2) A Returning Officer, Assistant Returning Officer, Presiding Officer, Assistant Presiding Officer, Polling Officer or any other Officer or clerk on duty in connection with the election who is guilty of an offence under sub-section (1) shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to one hundred thousand rupees or with both.²⁵⁰

158. Penalty for corrupt practice.— Any person guilty of corrupt practice shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one hundred thousand rupees or with both.

159. Illegal practice.²⁵¹— (1) A person is guilty of illegal practice if he,-

- (a) fails to comply with the provisions of section 121;
- (b) obtains or procures, or attempts to obtain or procure, the assistance of any person in the service of Pakistan to further or hinder the election of a candidate;
- (c) votes or applies for a ballot paper for voting at an election knowing that he is not qualified for, or is disqualified from, voting;
- (d) votes or applies for a ballot paper for voting more than once in the same polling station;
- (e) votes or applies for a ballot paper for voting in more than one polling station for the same election;
- (f) removes a ballot paper from a polling station during the poll;
- (g) affixes hoardings, pana-flexes, portraits or banners of any size.
- (h) hoists party flag at any public or private building other than the residence of a candidate or at the office of a political party.
- (i) does wall chalking for the purpose of canvassing for an election;
- (j) uses loudspeakers for canvassing except at the election meetings;
- (k) knowingly induces or procures any person to do any of the aforesaid acts'

(2) The Commission shall determine the size of posters, handbills and pamphlets, which the candidates or political parties may use for canvassing for an election provided that no person shall print or publish, or cause to be printed or published, any election pamphlet, handbill or poster which does not bear on its face the names and addresses of the printer and the publisher thereof.

(3) The head of district administration, the District Returning Officer and the Returning Officer shall be responsible for taking preventive measures and effective implementation of aforesaid sub-clauses (h), (i) (j) and (k).²⁵²

160. Penalty for adversely affecting the interests of

Comment [s9]: The present scheme seems more appropriate wherein all forms of "corrupt practices" have been defined first and then punishment for corrupt practices has been given at the end in section 82.

Comment [QS10]: Mr. Zafar Ali Shah MNA submitted a note of dissent on the issue of wall chalking and ECP Legal Framework Committee endorses his views

Comment [QS11]: Sub-section (2) (d) and sub-section (4) of this section are proposed to be reconsidered for retaining in this act by the Standing Committee.

candidate.²⁵³— A person is guilty of an offence of illegal practice if he, as a proposer or seconder, or in a fictitious name as a proposer or seconder, willfully does any act which he is prohibited by law from doing, or omits to do any act which he is required by law to do, or makes any entry in a nomination form which is not correct, or subscribes to a nomination form a signature which is not genuine, and thereby adversely affects the interests of any person as a candidate.

161. Prohibition of public meetings during certain period.²⁵⁴— A person is guilty of illegal practice if he convenes, holds or attends any public meeting, and promotes or joins in any procession, within the area of any constituency or, as the case may be, a Province, during a period of forty-eight hours ending at midnight following the conclusion of the poll for any election in that constituency or the Province.

162. Disorderly conduct near polling station.²⁵⁵— A person is guilty of illegal practice, if he, on the polling day-

- (a) uses, in such manner as to be audible within the polling station, any gramophone, megaphone, loudspeaker or other apparatus for reproducing or amplifying sounds;
- (b) persistently shouts in such manner as to be audible within the polling station;
- (c) does any act which-
 - (i) disturbs or causes annoyance to any elector or voter visiting a polling station for the purpose of voting; or
 - (ii) interferes with the performance of the duty of a Returning Officer, Presiding Officer, Assistant Presiding Officer, Polling Officer or any person on duty at a polling station; or
- (d) abets the doing of any of the aforesaid acts.

163. Interference with the secrecy of voting.²⁵⁶— A person is guilty of illegal practice if he-

- (a) interferes or attempts to interfere with an elector or voter when he records his vote;
- (b) in any manner obtains or attempts to obtain in a polling station information as to the candidate or candidates for whom an elector or voter is about to vote or mark his preferences in case of election to the Senate or has voted or as the case may be, marked his preferences;
- (c) communicates at any time any information obtained in a polling station as to the candidate or candidates for whom an elector or

a voter is about to vote or mark his preferences or has voted or marked his preferences; or

- (d) takes or attempts to take a photograph of the marked ballot paper by using cell phone camera or any other device to interfere with the secrecy of vote,²⁵⁷ or
- (e) in any other manner discloses the secrecy of the vote.

164. Penalty for illegal practice.²⁵⁸— A person guilty of an offence under section 159, section 160, section 161, section 162, or section 163 shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one hundred thousand rupees, or with both.

165. Breach of official duty in connection with election.²⁵⁹— A person appointed to perform any function in connection with an election is guilty of breach of official duty if he willfully or without reasonable cause,-

- (a) tampers with papers;
- (b) fails to maintain secrecy;
- (c) influences electors or voters;

166. Failure to maintain secrecy.²⁶⁰— A Returning Officer, Assistant Returning Officer, Presiding Officer, Assistant Presiding Officer, polling officer, or any candidate, election agent or polling agent or an elector or voter attending a polling station or any person attending at the counting of votes is guilty of breach of official duty, if he,-²⁶¹

- (a) fails to maintain secrecy or aid in maintaining the secrecy of voting;
- (b) communicates, except for any purpose authorized by any law to any person before the poll is closed, any information as to the official marks; or
- (c) communicates any information obtained at the counting of votes as to the candidate or candidates for whom any vote is given or a preference is recorded, as the case may be, by any particular ballot paper.

167. Officials not to influence electors or voters.²⁶²— A Returning Officer, Assistant Returning Officer, Presiding Officer, Assistant Presiding Officer, Polling Officer or any other officer or clerk performing a duty in connection with an election, or any member of a police force, is guilty of breach of official duty, if he, in the conduct or management of an election or maintenance of order at a polling station,-

- (a) persuades any person to give his vote;
- (b) dissuades any person from giving his vote;
- (c) influences in any manner the voting of any person; or
- (d) does any other act calculated to influence the result of the election.

168. Assistance by Government servant.²⁶³— A person in the service of Pakistan is guilty of breach of official duty in connection with an election, if he misuses his official position in a manner calculated to influence the results of the election.

169. Penalty for Breach of official duty in connection with election.²⁶⁴— A person guilty of an offence under section 165, section 166, section 167 or section 168 shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

170. Certain offences cognizable.²⁶⁵— (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under section 154 (1) (g) or section 155 or section 156 or section 157(1) or section 160 or section 162 of this Act shall be cognizable offence.

(2) Notwithstanding anything contained in this Act or any other law for the time being in force, the offences under this chapter shall be tried by the Sessions Judge and an appeal against his order shall lie before a Division Bench of the High Court.

(3) The proceedings against a person for being involved in corrupt or illegal practice may be initiated on a complaint made by a person or by the Commission.²⁶⁶

Provided that where a complaint made by a person other than the Commission, proves to be false, *mala-fide* or is made for any ulterior motive to provide benefit to another person, the complainant shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both.

Explanation.- In this section, "Sessions Judge" includes Additional Sessions Judge.

171. Prosecution of offences by public officers.²⁶⁷— (1) No court shall take cognizance of the offences punishable under section 169, except upon a complaint in writing, made by order of or under authority from the Commission.

(2) The Commission shall, if it has reason to believe that any offence specified in sub-section (1) has been committed, cause such enquiries to be

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made or prosecution to be instituted as it may think fit.

(3) An offence specified in sub-section (1) shall be exclusively triable by the Court of Sessions within the jurisdiction of which the offence is committed.

(4) In respect of an offence specified in sub-section (1), section 494 of the Code of Criminal Procedure, 1898 (Act V of 1898), shall have effect as if, after the word and comma "may," therein, the words "if so directed by the Commission and" were inserted.

172. Court proceedings relating to election expenses.²⁶⁸— (1)

The Commission, in accordance with the prescribed procedure, shall assess or cause to be assessed the return of election expenses submitted by each contesting candidate including returned candidate in order to determine as to who has exceeded the prescribed limits of election expenses.

(2) Where after the assessment of the returns, the Commission is of the view that a candidate has acted in contravention of the provisions of section 118 of the Act, it shall direct to file a complaint through an officer duly authorized in this behalf to initiate proceedings in the court of Sessions Judge against such person;

(3) Where a contesting candidate including returned candidate fails to file return of expenses within the specified period, the Returning Officer shall cause a notice to be issued to him calling upon such candidate to show cause why proceedings may not be initiated against him and if despite service, he does not comply with the provisions of section 121, the Returning Officer shall report the matter to the Commission and the Commission shall direct to file a complaint through an officer duly authorized in this behalf against such person before the Court of Sessions for further proceedings in accordance with law and an appeal against the order of the Sessions Judge shall lie before a Division Bench of the High Court.

173. Certain offences triable by officers authorized by the Commission.²⁶⁹— Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), an officer for the time being exercising the powers of a civil or criminal court, or an officer of the Armed Forces, or an officer performing a duty in connection with an election, who is authorized by the Commission in this behalf may,-

- (i) exercise the powers of a Magistrate of the first class under the said Code in respect of the offences punishable under section 153, section 155, section 156, section 158, section 159, section 161, and section 162 of this Act; and
- (ii) take cognizance of any such offence under any of the clauses of sub-section (1) of section 190 of the said Code; and shall try any such offence in a summary way in accordance with the provisions of the said Code relating to summary trials.

174. Certain Powers of a Police Officer.²⁷⁰— A Police Officer may-

- (a) arrest without warrant, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), any person who.-
 - (i) commits personation or an offence under section 162 if the Presiding Officer directs him to so arrest such person;
 - (ii) while being removed from the polling station by the Presiding Officer under section 201, commits any offence at the polling station.
- (b) remove any notice, sign, banner or flag used in contravention of section 159; and
- (c) seize any instrument or apparatus used in contravention of section 162 and take such steps, including use of force, as may be reasonably necessary for preventing such contravention.

175. Offences punishable under Pakistan Penal Code.²⁷¹— (1) If any person:

- (a) attacks the polling station or polling booth;
- (b) causes or attempts to cause any injury to a person or loss of public property at the polling station;
- (c) exhibits or uses weapons or makes aerial firing in or around the polling station;
- (d) disturbs the polling proceedings or causes to harass the electors to leave the polling station without voting ;
- (e) snatches or attempts to snatch the ballot boxes or ballot papers etc;
- (f) kidnaps or attempts to kidnap the Presiding Officer or a Polling Officer; or
- (g) does any other act at the polling station which is punishable under the relevant provisions of Pakistan Penal Code,

the Presiding Officer shall report in writing the commission of any of the aforementioned offences, to the Returning Officer, who shall refer the matter to the District Police Officer for registration of a case against the alleged offender.

(2) The District Police Officer shall send a copy of the First Information Report to the Provincial Election Commissioner of the Province and ensure early submission of challan to the Court of competent jurisdiction for its trial and submit to the Provincial Election Commissioner periodical report with regard to the progress thereof.

176. Court to report convictions to the Commission.— A Court convicting any person for an offence punishable under this Chapter, other than corrupt practice, shall send a report to the Commission of such conviction together with its recommendations, if any, considering the special circumstances of any case, for the mitigation or remission of any disqualification incurred by such person under this Act.

177. Punishment under this chapter not in derogation of any other liability.²⁷²— Any punishment imposed on any person for an offence punishable under this Chapter shall be in addition to, and not in derogation of, any liability incurred by such person under any other provision of this Act.

CHAPTER XI
POLITICAL PARTIES²⁷³

178. Formation of political parties etc.,²⁷⁴—(1) Subject to the provisions of this Act, it shall be lawful for any body of individuals or association of citizens to form, organize, continue or set-up a political party.

(2) A political party shall have a distinct identity of its structures at the national, provincial and local levels, wherever applicable.

(3) Every political party shall have a distinct name.

(4) Notwithstanding anything contained in sub-section (1), a political party shall not-

- (a) propagate any opinion, or act in a manner prejudicial to the fundamental principles enshrined in the Constitution; or
- (b) undermine the sovereignty or integrity of Pakistan, public order or public morality or indulge in terrorism; or
- (c) promote sectarian, regional or provincial hatred or, animosity; or
- (d) bear a name as a militant group or section or assign appointment titles to its leaders or office-bearers which connote leadership of armed groups; or
- (e) impart any military or para-military training to its members or other persons; or
- (f) be formed, organized, set-up or convened as a foreign-aided political party.

179. Registration of political parties. (1) A political party in existence at the commencement of this Act shall, within one month of such commencement, and a political party formed after such commencement shall, within one month of its being formed, apply to the Commission for registration.

(2) An application under sub-section (1) shall be made on behalf of a political party by such person and in such form, and shall be accompanied by such documents besides a copy of its constitution, a list of the names of its office-bearers at the National level and a statement of its total membership in each province, as the Commission may, by notification in the official Gazette, specify.

(3) The Commission shall register a political party applying for registration in accordance with sub-section (2) if the Commission is satisfied that the political party:

- (a) has published a formal manifesto, that is to say, the party's foundation document;
- (b) has undertaken to publish any amendment in the document

²⁷³ This chapter is the exact reproduction of the provisions of the Political Parties Order 2002.

²⁷⁴ Article 3, The Political Parties Order 2002

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referred to in clause (a) as and when such amendment is made;

- (c) believes in the Ideology of Pakistan and the integrity and sovereignty of Pakistan; and
- (d) has submitted its accounts as required by section 188;

(4) If a political party which has been registered under sub-section (3)-

- (a) fails, or has failed to submit its accounts within the period specified in section 188 or the rules made thereunder;
- (b) fails to hold intra-party election of any of its office-bearers within the time allowed by , and in accordance with, its constitution;
- (c) propagates any opinion, or acts in any manner, prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or the integrity or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan;
- (d) receives any aid, financial or otherwise, from the government or any political party of a foreign country, or any portion of its funds from foreign nationals; or
- (e) does or omits to do any such act or thing as would have resulted in registration being refused to it in the first instance.

then, without prejudice to any action that may be taken in respect of the political party under section 190, the Commission may, after giving the political party an opportunity of showing cause against action proposed to be taken, cancel its registration.

(5) The cancellation of the registration of a political party under sub-section (4) shall be notified by the Commission in the official gazette.

(6) A political party which has not been registered under sub-section (3) or the registration of which has been cancelled under sub-section (4), shall not be eligible to participate in an election to a seat in a House of Parliament or a provincial assembly or to nominate or put up a candidate at any such election.

180. Constitution of political parties.²⁷⁵—(1) A political party shall formulate its constitution, with whatever name it may be referred, which *inter-alia* shall include—

- (a) the aims and objectives of the party;
- (b) organisational structure of the party at the Federal, Provincial and Local levels, whichever applicable;
- (c) criteria of membership of the party;

²⁷⁵ Article 4, The Political Parties Order 2002

- (d) membership fee to be paid by the members;
- (e) qualifications and tenure of the party leader and other office-bearers of the party;
- (f) criteria for receipt and collection of funds for the party; and
- (g) procedure for—
 - (i) election of party leader and other office-bearers at the Federal, Provincial and Local levels, wherever applicable;
 - (ii) selection or nomination of party candidates for election to public offices and legislative bodies;
 - (iii) resolution of disputes between members and party, including issues relating to suspension and expulsion of members; and
 - (iv) method and manner of amendments in the constitution of the party.

(2) Every political party shall provide a printed copy of its constitution to the Commission.

(3) Any change in the constitution of a political party shall forthwith be communicated to the Commission which shall maintain updated record of the constitutions of all the political parties.

181. Membership of political parties.²⁷⁶—(1) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party or be otherwise associated with a political party or take part in political activities or be elected as an office-bearer of a political party:

Provided that a person shall not be appointed or serve as an office-bearer of a political party if he is not qualified to be, or is disqualified from being elected or chosen as a member of Majlis-e-Shura (Parliament) under Article 63 of the Constitution or under this Act or any other law for time being in force.

(2) Where a person joins a political party, his name shall be duly entered in the record of the political party as a member and shall be issued a membership card, or any other document showing his membership of such political party.

(3) A person shall not be a member of more than one political party at a time.

(4) A member of a political party shall have the right of access to the records of the political party.

182. Membership fee and contributions.²⁷⁷—(1) A member of a political party shall be required to pay a membership fee as provided in the political party's constitution and may, in addition, make voluntary contributions

²⁷⁶ Article 5, The Political Parties Order 2002

²⁷⁷ Article 6, The Political Parties Order 2002

towards the political party's funds.

(2) The contribution made by a member or a supporter of a political party shall be duly recorded by that political party

(3) Any contribution made, directly or indirectly, by any foreign government, multi-national or domestically incorporated public or private company, firm, trade or professional association shall be prohibited and a political party may accept contributions and donations only from individuals.

(4) Any contribution or donation which is prohibited under this Act shall be confiscated in favour of the State in the manner as may be prescribed.

Explanation.— For the purpose of this section, a "contribution or donation" includes a contribution or donation made in cash, kind, stocks, vehicles, fuel and provision of other such facilities.

183. Suspension or expulsion of a member.²⁷⁸— A member of a political party may be suspended or expelled from the political party's membership in accordance with the procedure provided in the political party's constitution:

Provided that before making an order for suspension or expulsion of a member from the political party, such member shall be provided with a reasonable opportunity to show cause against the action proposed and of hearing.

184. Selection for elective offices.²⁷⁹— A political party shall make the selection of candidates for elective offices, including the membership of the Majlis-e-Shoora (Parliament) and Provincial Assemblies, through a transparent democratic procedure and while making the selection of candidates, each political party shall ensure at least ten per cent representation of women and non-Muslims.

185. Functioning of a political party.²⁸⁰—(1) A political party shall have an elected general council at the Federal, Provincial and Local levels, wherever applicable, and by whatever name it may be referred.

(2) Every political party shall, at least once in a year, convene a general meeting at the Federal, Provincial and local levels of a political party, wherever applicable, to which a political party members or their delegates shall be invited to participate.

(3) A member or group of members of a political party may nominate in writing any other member of the party as a delegate to represent him or them and cast his or their votes in a party meeting.

186. Elections within a political party.²⁸¹—(1) The party leader and other office-bearers of a political party at the Federal, Provincial and local levels, wherever applicable, shall be elected periodically in accordance with

²⁷⁸ Article 7, The Political Parties Order 2002

²⁷⁹ Article 8, The Political Parties Order 2002

²⁸⁰ Article 10, The Political Parties Order 2002

²⁸¹ Article 11, The Political Parties Order 2002

political party's constitution through secret ballot based on a democratic and transparent system:

Provided that a period, not exceeding four years, shall intervene between any two elections.

(2) A member of a political party shall, subject to the provisions of the political party's constitution, be provided with an equal opportunity of contesting election for any political party office, including that of the party leader.

(3) All members of the political party at the Federal, Provincial and local levels shall constitute the electoral college for election of the party general council at the respective levels.

187. Certification by the political party.²⁸²—(1) The party leader of a political party shall, within seven days from completion of the intra-party elections submit a certificate under his signatures to the Commission to the effect that the elections were held in accordance with the constitution of the party and this Act to elect the party leader and other office-bearers at the Federal, Provincial and local levels, wherever applicable.

(2) The certificate referred to in sub-section (1) shall contain information in respect of—

- (a) the date of the last intra-party elections;
- (b) the names, designations and addresses of the party leader and all other office-bearers elected at the Federal, Provincial and Local levels, wherever applicable;
- (c) the election results, including the total number of votes cast and the number of votes secured by each contestant for all of its party offices; and
- (d) copy of the political party's notifications declaring the results of the election.

(3) The Commission shall publish for public information the certificate including details of elections referred to in sub-section (2).

188. Information about the sources of party's fund.²⁸³—(1) A political party shall, in such manner and in such form as may be prescribed²⁸⁴, submit to the **Commission**,²⁸⁵ within sixty days from the close of each financial year, a consolidated statement of its accounts audited by a Chartered Accountant containing—

- (a) annual income and expenses;
- (b) sources of its funds; and
- (c) assets and liabilities.

²⁸² Article 12, The Political Parties Order 2002

²⁸³ Article 13, The Political Parties Order 2002

²⁸⁴ Already prescribed under the rules, the words proposed to be deleted seem to be redundant.

²⁸⁵ After the 18th Amendment, the word "Commission" has replaced "Commissioner."

(2) The statement referred to in sub-section (1) shall be accompanied by the report of a Chartered Accountant with regard to the audit of accounts of the political party.

(3) The statement referred to in sub-section (1), shall be accompanied by a certificate signed by the party leader stating that—

- (a) no funds from any source prohibited under this Act were received by the political party; and
- (b) the statement contains an accurate financial position of the party.

189. Eligibility of party to obtain election symbol.—(1) A political party or, as the case may be, a combination of political parties shall not be entitled to obtain an election symbol if it,—

- (a) does not establish a functional head office with a central Committee, by whatever name it may be called, offices in at least ten administrative districts and offices in at least fifty Tehsils or Talukas, wherever applicable.
- (b) has less than one thousand members.
- (c) has not secured five percent of total votes polled in the constituencies in which its candidates took part in preceding general elections;

Provided that clause (c) shall not apply to a newly formed political party.

(2) Where any political party or a combination of political parties, severally or collectively, contravenes the provisions of sections 187 and 188, it shall not be entitled to obtain an election symbol for election to the Majlis-e-Shoora (Parliament) or the Provincial Assembly, and the Commission shall not allocate an election symbol to such political party or, as the case may be, the combination of political parties for such election.

190. Dissolution of a political party.²⁸⁶—(1) Where the Federal Government is satisfied that a political party is a foreign-aided party or has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan or is indulging in terrorism, it shall make such declaration by a notification in the official Gazette.

(2) Within fifteen days of making a declaration under sub-section (1), the Federal Government shall refer the matter to the Supreme Court and its decision on such reference shall be final.

(3) Where the Supreme Court upholds the declaration made against a political party under sub-section (1), such party shall stand dissolved forthwith.

191. Effects of Dissolution of political party.²⁸⁷—(1) Where a

²⁸⁶ Article 15, The Political Parties Order 2002

²⁸⁷ Article 16, The Political Parties Order 2002

political party is dissolved under section 190, any member of such political party, if he is a member of the Majlis-e-Shoora (Parliament) or a Provincial Assembly, shall be disqualified for the remaining term to be a member of the Majlis-e-Shoora (Parliament) or, as the case may be, a Provincial Assembly, unless before the final decision of the Supreme Court, he resigns from the membership of the party and publicly announces his disassociation with such political party.

(2) A person becoming disqualified from being a member of the Majlis-e-Shoora (Parliament) or Provincial Assembly under sub-section (1) shall not participate in election for any elective office or any legislative body till the expiry of four years from the date of his disqualification from being a member of the Majlis-e-Shoora (Parliament) or, as the case may be, a Provincial Assembly.

(3) The members of a political party becoming disqualified from being members of Majlis-e-Shoora (Parliament) or a Provincial Assembly on its dissolution shall be notified in the official Gazette.²⁸⁸

192. Code of conduct of political parties.— (1) The Commission shall hold consultation with political parties, for developing a Code of conduct for political parties and contesting candidates to be followed by them in their election campaigns which shall remain in force till it is revised.

(2) The Commission shall publish the Code of conduct in the official gazette and on its website.

²⁸⁸ Article 17 related to General Elections 2002 and has therefore become redundant.

CHAPTER XII ALLOCATION OF SYMBOLS

193. Allotment of symbols .—(1) In every constituency where election is contested, a different symbol shall be allotted to each contesting candidate in accordance with the provisions of this chapter.

(2) No symbol shall be allotted to any candidate other than the prescribed symbols .

194. Classification of symbols.— For the purpose of this chapter, symbols are classified as under:—

- (a) Symbols allocated to political parties; and
- (b) Symbols other than those allocated to political parties

195. Application for allocation of symbol—Subject to fulfillment of the provisions of this chapter and the rules, a political party shall make an application to the Commission for allocation of a symbol of its choice for each general election within the period specified by the Commission in its press release, and the application shall contain —

- (a) the list of symbols applied for in order of preference;
- (b) symbol or symbols if any allocated to the political party during the previous general elections;
- (c) every such application shall be signed by the party leader, by whatever name designated;
- (d) address of the head office of the political party;
- (e) the name of its President, Secretary-General and other office-bearers of the Central Executive committee, by whatever name they may be called;
- (f) the numerical strength of its members;
- (g) copies of election manifesto and Constitution of the political party;
- (h) whether the political party was represented by a member or members in the National Assembly or a Provincial Assembly in the past, if so, the name and other particulars of such member;
- (i) whether the political party has conducted the *intra-party* elections as required under section 186 of this Act; and
- (j) such other particulars or information from the party as the Commission may deem necessary.

196. Allocation of symbol.— A symbol shall be allocated to a political party if it complies with the provisions of this Act.

Explanation: The expression 'political party' shall include a combination of political parties who have agreed to put up joint candidates.

197. Symbol disputed by a political party or a combination of political parties.—(1) If a political party fulfils the requirement provided under section 195, it may be allocated a prescribed symbol:

Provided that a political party shall have the right to claim the allocation of symbol allocated to it in any previous election.

Provided further that a political party shall have preference for allocation of a symbol if such a symbol was allocated to it before entering into an alliance with other parties in an earlier election.

(2) In case the same symbol was allocated to a combination of political parties at the last election and component parties apply for the same symbol for forthcoming elections, the allocation of that symbol to any one political party will be decided by drawing of lot.

198. Allotment of symbol to a contesting candidate.—(1) A candidate nominated by a political party at an election in any constituency shall be allotted the symbol allocated by the Commission to that political party and no other symbol.

(2) A candidate not nominated by any political party (hereinafter called as “independent candidate”) shall choose and shall be allotted one of the symbols not allocated to any political party, in the following manner:

- (a) where a symbol has been chosen by only one independent candidate, that symbol shall be allotted to that candidate and to no one else;
- (b) if a symbol is chosen by more than one independent candidates and one of them has previously been a member of the Parliament or a Provincial Assembly, such symbol shall be allotted to that former member;
- (c) if more than one independent candidates have chosen the same symbol, the returning officer shall allot the symbol to such candidate according to his preference, if applied therefor before allotment of symbols;
- (d) if more than one independent candidates have given preference for the same symbol, that symbol shall be allotted by drawing of lot.

CHAPTER XII MISCELLANEOUS

199. Absence of candidates not to invalidate acts²⁸⁹.— Where any act or thing is required or authorized by this Act to be done in the presence of the candidate, an election agent or a polling agent, the failure of such person to attend at the time and place appointed for the purpose shall not invalidate any act or thing otherwise validly done.

200. Admission to the polling station.²⁹⁰— The Presiding Officer, or as the case may be, Returning Officer shall, subject to such instructions as the Commission may give in this behalf, regulate the number of electors or as the case may be, voters to be admitted to the polling station at a time and shall exclude from the polling station all other persons except—

- (a) any person on duty in connection with the election;
- (b) the contesting candidates, their election agents and polling agents; and
- (c) such other persons as may be specifically permitted by the Commission.

Explanation: For the purpose of this section, the Returning Officer means the Returning Officer appointed for the conduct of election to the Senate.

201. Maintenance of order at the polling station.²⁹¹—(1) The Presiding Officer, and in case of Senate election, the Returning Officer, shall keep order at the polling station and may remove or cause to be removed any person who misconducts himself at a polling station or fails to obey any lawful orders of the Presiding Officer or, as the case may be, the Returning Officer.

(2) Any person removed under sub-section (1) from a polling station shall not, without the permission of the Presiding Officer, or the Returning Officer, again enter the polling station during the poll;

Provided that if the person referred to in sub-section (2) is accused of an offence in polling station for election to an Assembly or the Senate shall be liable to be arrested without warrant by a Police Officer.

(3) The powers under this section shall be so exercised not to deprive an elector or a voter of an opportunity to cast his vote at the polling station at which he is entitled to vote.

202. Election by secret ballot.²⁹²— An election under this Act shall be decided by secret ballot and, **subject to the provisions of section 71, every elector or as the case may be,** voter shall cast his vote by inserting in accordance with the provisions of this Act, in the ballot box, a ballot paper in the prescribed form.

²⁸⁹ Section 24 The Representation of Peoples Act 1976 and Section 21 The Senate (Election) Act 1975

²⁹⁰ Section 31 The Representation of Peoples Act 1976.

²⁹¹ Section 32 The Representation of Peoples Act 1976

²⁹² Section 28 The Representation of Peoples Act 1976

203. Submission of statements of assets and liabilities.²⁹³—(1)

Every member shall, in the prescribed form, submit a statement of assets and liabilities of his own, his spouse and dependents annually to the Commission²⁹⁴ by the thirtieth day of September each year.

(2) The Commission, on the first day of October each year, through a press release, shall publish the names of members who failed to submit statement of assets and liabilities within the period specified under sub-section (1).

(3) The Commission²⁹⁵ shall, on the sixteenth day of October, by an order suspend the membership of such member for a period of sixty days, who fails to file statement of assets and liabilities by the fifteenth day of October and such member shall cease to function for a period of sixty days.

Provided that a member who fails to submit statement of assets and liabilities within the aforesaid period of sixty days, he will continue to remain suspended till the submission of requisite statement.

(4) The statements of assets and liabilities submitted under this section shall be published in the Official Gazette and copies thereof can be obtained on payment of prescribed fee.

(5) The Commission shall determine the veracity of statement of assets and liabilities filed under this section in the manner as it may deem necessary and may seek assistance of any authority, agency or department in the federation or a province.

(6) Where the Commission is satisfied that statement of assets and liabilities filed under this section is false in material particulars, it may, by order, direct that proceeding against the member submitting such statement shall be initiated for committing offence of corrupt practice under this Act.

Provided that reasonable opportunity of being heard shall be provided to such member before initiation of proceedings for committing offence of corrupt practice under this Act.

204. Jurisdiction of courts barred.²⁹⁶—(1) No court shall question

the legality of any action taken in good faith by or under the authority of the Commission, the Commissioner, a Returning Officer or, as the case may be, a Presiding Officer, an Assistant Presiding Officer or a Polling Officer or any decision given by any of them or any other officer or authority appointed under this Act or the rules.

(2) No court shall question the validity of the electoral rolls prepared or revised under this Act or the legality or propriety of any proceedings or action taken thereunder by or under the authority of the Commission or a Registration Officer.

(3) The validity of the delimitation of any constituency, or of any

²⁹³Section 42A The Representation of the People Act 1976 and Section 25A The Senate (Election) Act 1975

²⁹⁴ The word Commissioner has been replaced with "commission" due to the 18th Amendment.

²⁹⁵ The word Commissioner has been replaced with "commission" due to the 18th Amendment.

²⁹⁶Section 105 The Representation of The People Act 1976, Section 86 The Senate (Election) Act 1975 and Section 29 The Electoral Rolls Act 1974

proceedings taken or anything done by or under the authority of the Commission, under this Act shall not be called in question in any court.

205. Protection of actions taken in good faith.²⁹⁷— No suit, prosecution or other legal proceeding shall lie against the Commission, the Commissioner or any officer or other person in respect of anything which is in good faith done or intended to be done under or in pursuance of this Act or of any rule or order made or any direction given thereunder.

206. Power to make Rules.²⁹⁸— The Commission may with the approval of the President, make rules for carrying out the purposes of this Act.

207. Repeal.— The following laws are hereby repealed:

- (a) The Political Parties Order, 2002 (Chief Executive's Order No.18 of 2002);
- (b) The Representation of the People Act, 1976 (Act No. LXXXV of 1976);
- (c) The Senate (Election) Act, 1975 (Act No. LI of 1975);
- (d) The Electoral Rolls Act, 1974 (Act No. XXI of 1974) and
- (e) The Delimitation of Constituencies Act, 1974 (Act No. XXXIV of 1974).

...

²⁹⁷Section 106 The Representation of The People Act 1976, Section 87 The Senate (Election) Act 1975

²⁹⁸At present rule making authority rests with the President or the Federal Government. In order to enhance its independence; it is suggested that this authority should lie with the Election Commission who is responsible for holding elections in accordance with the Constitution and the law.